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# New York Supreme Court

## FIRST JUDICIAL DEPARTMENT

### NEW YORK COUNTY

In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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### Statement Under Rule 234

This proceeding was instituted by resolutions of the Board of Estimate and Apportionment of the City of New York adopted September 30, 1921, and June 29, 1923.

Upon petition of the City of New York, verified July 13, 1923, the order to condemn was made herein, dated July 18, 1923, and entered July 18, 1923.

The Tentative Decree of the Supreme Court as to award for damage and assessments for benefit, dated April 4, 1927, was filed April 11, 1927.

*Statement Under Rule 234*

Pursuant to published notice thereunder The City of New York on April 27, 1927; Interborough Rapid Transit Company on May 2, 1927; Manhattan Railway Company on May 2, 1927; The Equitable Trust Company of New York on May 2, 1927; Pershing Square Building Corporation on May 2, 1927; The New York Central Railroad Company, The New York and Harlem Railroad Company and The New York State Realty and Terminal Company on May 2, 1927; Seward W. Ehrich, Inc. on April 30, 1927; Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation on May 2, 1927; Manhattan Storage and Warehouse Company on May 2, 1927, Cooper Union for the Advancement of Science and Art on May 2, 1927; Corn Exchange Bank on April 27, 1927; Bowman Biltmore Hotels Corporation (Hotel Commodore), Bowman Biltmore Hotels Corporation (Hotel Biltmore), B. L. M. Bates Corporation (Hotel Belmont), Bates-Bowman Corporation (Murray Hill Hotel), The Bowery Savings Bank, on April 28, 1927; Rogers Peet Company, Princeton Club of New York, Fritz G. Schmidt, Office Realty Corporation, William Volk, 202-204 East 42nd St. Corporation, Vanderbilt Avenue Building Corporation, Centerminal Corporation, F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc. Frederick Brown, James B. Ford, on April 29, 1927; Anahma Realty Corporation, D. A. Schulte, Inc., The Oceanic Investing Company, Borden Realty Corporation on April 30, 1927; R-W Realty Company, Inc., Trustees of the Estate of James Kelley, Deceased, Guaranty Trust Company of New York as substituted Trus-

tees of the Estate of John Curry, Deceased, Childs Company, J. Chr. G. Hupfel, J. Chr. G. Hupfel Co. Inc., J. Homer Cudmore, Alex Taylor & Co. Inc., Henry Hof, 140 East 27th Street Corporation and Carbide and Carbon Realty Co., on May 2, 1927, filed objections to the aforesaid Tentative Decree, and Bowman Biltmore Hotels Corporation (Hotel Commodore), Corn Exchange Bank, B. L. M. Bates Corporation (Hotel Belmont), Bates-Bowman Corporation (Murray Hill Hotel), Guaranty Trust Co. of New York, as substituted Trustee of the Estate of John Curry, deceased, J. Chr. G. Hupfel Co., Inc., Bowman Biltmore Hotels Corp. (Hotel Biltmore), The Bowery Savings Bank, Rogers Peet Company, Princeton Club of New York, Fritz G. Schmidt, Office Realty Corporation, William Volk, 202-204 East 42nd Street Corporation, Vanderbilt Avenue Building Corporation, Centerminal Corporation, F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc., Frederick Brown, James B. Ford, Anahma Realty Corporation, D. A. Schulte, Inc., The Oceanic Investing Company, Borden Realty Corporation, The R-W. Realty Company, Inc., Trustees of the Estate of James Kelley, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Alex Taylor & Co., Inc., Henry Hof, 140 East 27th Street Corporation and Carbide & Carbon Realty Co., Inc., on October 24, 1927, filed amended objections to the aforesaid Tentative Decree.

The Final Decree of the Supreme Court, dated February 28, 1928, was filed March 14, 1928.

From the above Final Decree entered March 14, 1928, an appeal was taken to the Appellate

10 *Statement Under Rule 234*

Division of the Supreme Court, First Judicial Department, by the City of New York, by the Interborough Rapid Transit Company, by the Manhattan Railway Company, by The Equitable Trust Company of New York, by Bowman-Biltmore Hotels Corporation (Hotel Commodore), *et al.*, by Pershing Square Building Corporation, by The New York Central Railroad Company, *et al.*, by Seward W. Ehrich, Inc., by Robert Walton Goelet, *et al.*, by The Manhattan Storage and Warehouse Company and by Cooper Union for the Advancement of Science and Art.

11 The Appellate Division of the Supreme Court, First Judicial Department, by order dated May 9, 1930, and entered and filed in the Clerk's office thereof on June 3, 1930, a certified copy of which order was entered and filed in the office of the Clerk of the County of New York on June 26, 1930, reversed, vacated and set aside the Final Decree entered March 14, 1928, and remitted the said Final Decree and the proceeding to the Supreme Court with directions to make award for Damage No. 1 in accordance with the opinion of the Appellate Division of the Supreme Court, First Judicial Department.

12 The Supplemental and Amended Tentative Decree as to awards for damage and assessments for benefit herein, dated March 4, 1932, was filed March 7, 1932.

Pursuant to published notice thereunder The City of New York on March 8, 1932; Interborough Rapid Transit Company on March 24, 1932; Manhattan Railway Company on March 26, 1932; The Chase National Bank of the City of New York, successor by merger and consolidation to The

Equitable Trust Company of New York on March 24, 1932; Central Hanover Bank and Trust Company, successor to Central Union Trust Company, on March 28, 1932; Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), Bates-Bowman Corporation (Murray Hill Hotel), One Twenty Park Avenue Realty Corporation, Corn Exchange Bank, The Bowery Savings Bank, Lincoln Forty Second Street Corporation, Carbide and Carbon Realty Co., Inc., Vanderbilt Avenue Building Corporation, D. A. Schulte, Inc., John Curry Real Estate, Inc., J. Chr. G. Hupfel Co., Inc., Rogers Peet Company, Princeton Club of New York, News Syndicate Co., Inc., F. & S. Rockaway Restaurant, Inc., Tishman Realty and Construction Co., Inc., The Oceanic Investing Corporation, Borden Realty Corporation, R-W Realty Corporation, Inc., Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Anahma Realty Corporation and William Volk on March 28, 1932; Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and National City Realty Corporation on March 25, 1932; Cooper Union for the Advancement of Science and Art on March 26, 1932; The Manhattan Storage and Warehouse Company on March 28, 1932, and Pershing Square Building Corporation on March 24, 1932, filed objections to the above supplemental and amended Tentative Decree.

The Final Decree of the Supreme Court, dated May 7, 1932, was filed May 12, 1932.

The names of the parties are: Arthur J. W. Hilly, Corporation Counsel of the City of New

16 *Statement Under Rule 234*

York, appearing as attorney for The City of New York; James L. Quackenbush, appearing as attorney for the Interborough Rapid Transit Company; William Roberts, appearing as attorney for the Manhattan Railway Company; George Welwood Murray, appearing as attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York; Davies, Auerbach and Cornell, appearing as attorneys for
17 Central Hanover Bank and Trust Company, successor to Central Union Trust Company of New York; Edmund W. Van Voorhis, appearing as attorney for Pershing Square Building Corporation; Shearman & Sterling, appearing as attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation; Middlebrook & Sincerbeaux, appearing as attorneys for Manhattan Storage & Warehouse Company; Parsons, Closson & McIlvaine, appearing as attorneys for Cooper Union for the Advancement of Science and Art, and Page & Page,
18 appearing as attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), Corn Exchange Bank, Bates Bowman Corporatoin (Murray Hill Hotel), J. Chr. G. Hupfel Co., Inc., The Bowery Savings Bank, Rogers Peet Company, Princeton Club of New York, William Volk, Vanderbilt Avenue Building Corporation, F. & S. Rockaway Restaurant, Inc., Anahma Realty Corporation, D. A. Schulte, Inc., The Oceanic Investing Corporation, Borden Realty Corporation, The R-W Realty Company, Inc., Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, deceased, Lincoln

Forty Second Street Corporation, John Curry Real Estate, Inc., News Syndicate Co., Inc., Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, One Twenty Park Avenue Realty Corporation, Tishman Realty and Construction Co., Inc., and Carbide & Carbon Realty Co., Inc.

There has been no change of parties or attorneys.

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## Notice of Appeal of the City of New York to Appellate Division 20

New York Supreme Court, First Judicial District, County of New York.

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In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, 21

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Sirs: Please take notice, that The City of New

22 *Notice of Appeal of The City of New York*

York hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from that part or portion of the Final Decree of the Supreme Court, New York County, made by Mr. Justice Phoenix Ingraham, dated May 7, 1932, and entered and filed in the Office of the Clerk of the County of New York on May 12, 1932, in the above entitled matter, which makes and contains an award of $619,352.41 principal and $312,772.97 interest to
23 the Manhattan Railway Company for Damage Number 1 as shown by the said Final Decree and by the damage maps attached or annexed thereto; and The City of New York appeals from each and every part of the said Final Decree in so far as the same relates to and covers and contains the said award of $619,352.41 principal and $312,772.97 interest made to the Manhattan Railway Company for Damage No. 1.

Dated, New York, June 9, 1932.

Yours, Etc., Arthur J. W. Hilly, Corporation
24 Counsel, Attorney for The City of New York, Office and P. O. Address, Municipal Building, Borough of Manhattan, New York City, N. Y.

To: Clerk of the County of New York. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York, N. Y. William Roberts, Esq., Attorney for Manhattan Railway Company, 233 Broadway, New York, N. Y. George Welwood Murray, Esq., Attorney for the Chase National Bank of The City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee under the second mortgage

of Manhattan Railway Company, 15 Broad Street, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company of New York, as Trustees under consolidated mortgage of Manhattan Railway Company, etc., and Central Hanover Bank and Trust Company, successor to Central Trust Company of New York, as Trustee, etc., 1 Wall Street, New York, N. Y.

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## Notice of Appeal of Interborough Rapid Transit Co. to Appellate Division

New York Supreme Court, First Judicial District.

[Same Title]

Sirs: Please take notice that Interborough Rapid Transit Company, claimant herein, hereby appeals to the Appellate Division of the Supreme Court for the First Department, from the Supplemental and Amended Final Decree of this Court, dated May 7, 1932, and filed and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932 and said Interborough Rapid Transit Company appeals from each and every part of said Supplemental and Amended Final Decree as well as the whole thereof.

Dated, New York, June 9, 1932.

Yours, etc., James L. Quackenbush, Attorney for claimant-appellant, Interborough Rapid

Transit Co., 165 Broadway, Borough of Manhattan, New York City.

To: Daniel E. Finn, Esq., Clerk of New York County. Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York. William Roberts, Esq., Attorney for Manhattan Railway Company. Davies, Auerbach & Cornell, Esqs., Attorneys for the Central Union Trust Company. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York.

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## Notice of Appeal of Manhattan Railway Co. to Appellate Division

New York Supreme Court, New York County.

[Same Title]

Sirs: Please take notice, that the Manhattan Railway Company, as owner and lessor of the property taken in condemnation in the above entitled proceeding, and a claimant and an objector herein, hereby appeals to the Appellate Division of the Supreme Court, First Department, from the Supplemental and Amended Final Decree of the Supreme Court, New York County, dated May 7, 1932, and filed and entered in the office of the Clerk of the County of New York on May 12, 1932 and from each and every part of said decree, as well as from the whole thereof.

Dated, New York, June 9, 1932.

Yours, &c., William Roberts, Attorney for Manhattan Railway Company, Office & Post Office Address, 233 Broadway, Borough of Manhattan, New York City, N. Y.

To: Daniel E. Finn, Esq., County Clerk of the County of New York. Arthur J. W. Hilly, Esq., Corporation Counsel, Municipal Building, Borough of Manhattan, New York City, N. Y. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York City, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank & Trust Co., Holder of First Mortgage on Manhattan Railway Company, as trustee, 1 Wall Street, New York City, N. Y. George Welwood Murray, Esq., Attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company, 15 Broad Street, New York City, N. Y.

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## Notice of Appeal of Chase National Bank of City of New York to Appellate Division

Supreme Court, New York County.

[Same Title]

Sirs: Please take notice that The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under

a Deed of Trust of the Manhattan Railway Company dated June 1, 1913 and an objector herein, hereby appeals to the Appellate Division of the Supreme Court, First Department from the supplemental and amended final decree of the Supreme Court, New York County made by Mr. Justice Phoenix Ingraham at Special Term, Part VI thereof, dated the 7th day of May, 1932 and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932, and from each and every part of said supplemental and amended final decree as well as from the whole thereof.

Dated, New York, June 9, 1932.

Yours, &c., George Welwood Murray, Attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York as Trustee under a deed of trust, etc.

To: Daniel E. Finn, Esq., County Clerk of New York County. Arthur J. W. Hilly, Esq., Corporation Counsel, Municipal Building, New York, N. Y. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, 1 Wall Street, New York, N. Y. William Roberts, Esq., Attorney for Manhattan Railway Company, 233 Broadway, New York, N. Y.

## Notice of Appeal of Central Hanover Bank & Trust Co. to Appellate Division

37

Supreme Court, New York County.

[Same Title]

Sirs: Please take notice that Central Hanover Bank & Trust Company (formerly Central Union Trust Company) hereby appeals to the Appellate Division of the Supreme Court in and for the First Judicial Department, from the Supplemental and Amended Final Decree of this Court, 38
dated May 7, 1932, and entered and filed in the Office of the Clerk of the County of New York on the 12th day of May, 1932, and said Central Hanover Bank & Trust Company (formerly Central Union Trust Company) hereby appeals from each and every part of said Supplemental and Amended Final Decree as well as from the whole thereof.

Dated, New York, June 9, 1932.

Yours, etc., Davies, Auerbach & Cornell, Attorneys for Central Hanover Bank & Trust Company, Office and P. O. Address, No. One Wall 39
Street, Borough of Manhattan, City of New York.

To: Daniel E. Finn, Esq., Clerk of New York County. Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York. William Roberts, Esq., Attorney for Manhattan Railway Company. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Co., 165 Broadway, New York City. George Welwood

Murray, Esq., Attorney for The Equitable Trust Company of New York. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, Owner of Benefit Lot No. 15, 52 William Street, New York City. Middlebrook & Sincerbeaux, Attorneys for Appellant The Manhattan Storage and Warehouse Company, Office and P. O. Address: 57 William Street, Borough of Manhattan, City of New York.

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**Notice of Appeal of Bowman Biltmore Hotels Corp'n (Hotel Commodore and Hotel Biltmore) *et al.* to Appellate Division**

New York Supreme Court, New York County.

[Same Title]

Please take notice that Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore); Bates-Bowman Corporation (Murray Hill Hotel); One Twenty Park Avenue Realty Corporation; Corn Exchange Bank; The Bowery Savings Bank; Lincoln Forty Second Street Corporation; Carbide & Carbon Realty Co., Inc.; Vanderbilt Avenue Building Corporation; D. A. Schulte, Inc.; John Curry Real Estate, Inc.; J. Chr. G. Hupfel Co., Inc.; Rogers Peet Company; Princeton Club of New York; News Syndicate Co., Inc.; F. & S. Rockaway Restaurant, Inc.; Tishman Realty and Construction Co., Inc.; The Oceanic Investing Corporation; Borden Realty Corporation; R-W Realty Company, Inc.; Clara L. North and Ella Blackburn, Trustees of the

Estate of James Kelley, Deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Anahma Realty Corporation and William Volk, objectors herein and as owners or lessees of property assessed for benefit in the above entitled proceeding, and each of them hereby appeal to the Appellate Division of the Supreme Court, First Department, from the Final Decree of the Supreme Court of the State of New York, New York County made herein, dated the 7th day of May, 1932, and entered in the office of the Clerk of New York County on the 12th day of May, 1932, and from each and every part of said Final Decree as well as from the whole thereof.

Dated, New York, June 9th, 1932.

Yours, etc., Page & Page, Attorneys for above named Parties Appellants, Office & P. O. Address, 55 Liberty Street, Borough of Manhattan, New York City.

To: Clerk of the County of New York. Hon. Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Municipal Building, New York, N. Y. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York, N. Y. William Roberts, Esq., Attorney for Manhattan Railway Company, 233 Broadway, New York, N. Y. George Welwood Murray, Esq., Attorney for the Chase National Bank of The City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee, under the second mortgage of Manhattan Railway Company, 15 Broad Street, New

46 *Notice of Appeal, Pershing Square Building Corp.*

York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company of New York, as Trustee under consolidated mortgage of Manhattan Railway Company, etc., and Central Hanover Bank and Trust Company, successor to Central Trust Company of New York, as Trustee, etc., 1 Wall Street, New York, N. Y.

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## Notice of Appeal of Pershing Square Building
47 ## Corp'n to Appellate Division

New York Supreme Court, New York County.

[Same Title]

Please take notice that Pershing Square Building Corporation, objector herein, and as owner of property assessed for benefit in the above entitled proceeding, hereby appeals to the Appellate Division of the Supreme Court, First Department, from the final decree of the Supreme Court of the State of New York, New York
48 County, made herein, dated the 7th day of May, 1932, and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932, and from each and every part of said final decree, as well as from the whole thereof.

Dated, New York, June 7, 1932.

Yours, etc., E. W. Van Voorhis, Attorney for Pershing Square Building Corporation, Office and P. O. Address, 511 Fifth Avenue, Borough of Manhattan, New York City.

To: Clerk of the County of New York. Hon.

Arthur J. W. Hilly, Corporation Counsel, Attorney for the City of New York, Municipal Building, New York, N. Y. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York, N. Y. William Roberts, Esq., Attorney for Manhattan Railway Company, 233 Broadway, New York, N. Y. George Welwood Murray, Esq., Attorney for the Chase National Bank of The City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee, under the second mortgage of Manhattan Railway Company, 15 Broad Street, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company of New York, as Trustee under consolidated mortgage of Manhattan Railway Company, etc., and Central Hanover Bank and Trust Company, successor to Central Trust Company of New York, as Trustee, etc., 1 Wall Street, New York, N. Y. Page & Page, Esqs., Attorneys for Certain Objectors, 55 Liberty Street, New York, N. Y.

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## Notice of Appeal of Rob't W. Goelet, *et al.* to Appellate Division

New York Supreme Court, New York County.

[Same Title]

Sirs: Please take notice that Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation, objectors herein and as owners or lessees of property assessed for ben-

52 *Notice of Appeal of Robert W. Goelet, et al.*

efit in the above entitled proceeding, and each of them, hereby appeal and appeals to the Appellate Division of the Supreme Court, First Department, from the Final Decree of the Supreme Court of the State of New York, New York County, made herein, dated the 7th day of May, 1932, and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932, and from each and every part of said Final Decree as well as from the whole thereof.

53 Dated, New York, June 8, 1932.

Yours, etc., Shearman & Sterling, Attorneys for the above named Parties Appellants, 55 Wall Street, Borough of Manhattan, New York City.

To: Clerk of the County of New York. Hon. Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Municipal Building, New York, N. Y. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York, N. Y. Wil-
54 liam Roberts, Esq., Attorney for Manhattan Railway Company, 233 Broadway, New York, N. Y. George Welwood Murray, Esq., Attorney for the Chase National Bank of the City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee, under the second mortgage of Manhattan Railway Company, 15 Broad Street, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company of New York, as Trustee under consolidated mortgage of Manhattan Railway Company, etc., and Central Hanover Bank and Trust Company, successor to

*Notice of Appeal of Manhattan Storage & Warehouse Co.*

Central Trust Company of New York, as Trustee, etc., 1 Wall Street, New York, N. Y.

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## Notice of Appeal of Manhattan Storage & Warehouse Co. to Appellate Division

New York Supreme Court, New York County.

[Same Title]

Sirs: Please take notice that The Manhattan Storage and Warehouse Company, objector herein and as owner of property assessed for benefit in the above entitled proceeding, hereby appeals to the Appellate Division of the Supreme Court, First Department, from the Final Decree of the Supreme Court of the State of New York, New York County, made herein, dated the 7th day of May, 1932, and entered in the office of the Clerk of New York County on the 12th day of May, 1932, and from each and every part of said Final Decree as well as from the whole thereof.

Dated, New York, N. Y., June 9, 1932.

Yours, etc., Middlebrook & Sincerbeaux, Attorneys for Appellant, The Manhattan Storage and Warehouse Company, Office and P. O. Address: 57 William Street, Borough of Manhattan, City of New York.

To: Clerk of the County of New York. Hon. Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Municipal Building, New York, N. Y. James L. Quackenbush,

Esq., Attorney for Interborough Rapid Transit Company, 165 Broadway, New York, N. Y. William Roberts, Esq., Attorney for Manhattan Railway Company, 233 Broadway, New York, N. Y. George Welwood Murray, Esq., Attorney for the Chase National Bank of The City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee, under the second mortgage of Manhattan Railway Company, 15 Broad Street, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company of New York, as Trustee under consolidated mortgage of Manhattan Railway Company, etc., and Central Hanover Bank and Trust Company, successor to Central Trust Company of New York, as Trustee, etc., 1 Wall Street, New York, N. Y.

59

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## Notice of Appeal of Cooper Union for Advancement of Science and Art to Appellate Division

60

Supreme Court, New York County.

[Same Title]

Sirs: Please take notice that Cooper Union for the Advancement of Science and Art hereby appeals to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department from the supplemental and amended final decree in this proceeding dated May 7, 1932, and entered and filed herein in the office of the Clerk of the County of New

61

York on May 12, 1932, and from each and every part thereof.

Dated, May 20, 1932.

Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science & Art, Owner of Benefit Lot No. 15, Office & P. O. Address, No. 52 William Street, Borough of Manhattan, New York City.

62

To: Clerk of New York County. Arthur J. W. Hilly, Esq., Corporation Counsel of the City of New York. Murray, Aldrich & Roberts, Esqs., Attorneys for Manhattan Railway Company. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Co. Davies, Auerbach and Cornell, Esqs., Attorneys for Central Union Trust Company. George Welwood Murray, Esq., Attorney for Equitable Trust Company.

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63

## Final Decree of Supreme Court Appealed From

At a Special Term Part VI of the Supreme Court of the State of New York, First Judicial District, held in and for the County of New New York, at the County Court House in the Borough of Manhattan, on the 7th day of May, 1932.

Present—Hon. Phoenix Ingraham, Justice.

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In the Matter of the Application of The City of New York relative to acquiring title to the ele-

64 *Final Decree*

vated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned in East 42nd Street constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

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The City of New York having heretofore made application to this Court that the compensation which should be made to the Manhattan Railway Company or to whomsoever may be entitled thereto, for acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in East 42nd Street, constituting the existing 42nd Street Spur, in the
66 Borough of Manhattan, City of New York, and also for acquiring the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain or use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, be ascertained and determined by the Court, without a jury, and that the cost of such improvement be assessed by the Court in accordance with Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919 and as amended by Chapter 635 of the Laws of

67

1923 and the Greater New York Charter, as amended and the resolutions of the Board of Estimate and Apportionment, adopted on the 30th day of September, 1921 and the 29th day of June, 1923, and said application having been duly granted by an order of this Court, bearing date the 18th day of July, 1923 and entered in the office of the Clerk of the County of New York on the 18th day of July, 1923.

That an appeal was taken to the Appellate Division of the Supreme Court, First Judicial Department, State of New York from the aforesaid order by the Interborough Rapid Transit Company and by the Manhattan Railway Company and the said appeal having been argued, it was, by order of the said Appellate Division of the Supreme Court, bearing date the 14th day of March, 1924 and entered in the office of the Clerk of the said Appellate Division of the Supreme Court on the 14th day of March, 1924, unanimously ordered that the order so appealed from be affirmed with $10. costs and disbursements to the respondent. The final Decree of the Supreme Court herein bearing date the 28th day of February, 1928, was duly entered in the office of the Clerk of the County of New York on the 14th day of March, 1928.

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An appeal having been taken to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, by the Interborough Rapid Transit Company by James L. Quackenbush, Esq., its Attorney, the Manhattan Railway Company by Messrs. Murray, Aldrich and Roberts, its Attorneys, The Equitable Trust Company of New York by George Welwood Mur-

ray, Esq., its Attorney, the Bowman Biltmore Hotels Corporation (Hotel Commodore) et al. by Messrs. Page and Page, their attorneys, the Pershing Square Building Corporation by Edmund W. Van Voorhis, Esq., its Attorney, The New York Central Railroad Company, the New York, and Harlem Railroad Company and the New York State Realty and Terminal Company by Alex S. Lyman, Esq., their Attorney, Seward W. Ehrich, Inc. by Messrs. Hollander and Bernheimer, its Attorney, Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York, and the National City Realty Corporation by Messrs. Sherman and Sterling, their Attorneys, the Manhattan Storage and Warehouse Company by Messrs. Middlebrook and Sincerbeaux, its Attorneys, the Cooper Union for the Advancement of Science and Art by Messrs. Parsons, Closson and McIlvaine, its Attorneys and The City of New York, from the Final Decree of the Supreme Court made herein, dated February 28, 1928 and entered in the office of the Clerk of the County of New York on March 14, 1928.

The said appeal having duly come on to be heard, by an order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department bearing date the 9th day of May, 1930 and entered in the office of the Clerk of the said Appellate Division of the Supreme Court of the State of New York, First Judicial Department on the 3rd day of June, 1930, a certified copy of such order was duly filed in the office of the Clerk of the County of New York on the 26th day of June, 1930, it was

73

"Ordered, That the objections of Cooper Union for the Advancement of Science and Art that the assessments for benefit have been improperly distributed upon the property lying within the area of assessment in the proceeding, be and the same hereby are overruled; and it is further unanimously

Ordered, That the Final Decree of the Supreme Court appealed from be and the same hereby is in all respects reversed, vacated and set aside, except as to the sum of $80,000.00, which amount 74
is the cost of the necessary reconstruction and alteration of the station at East 42nd Street and Third Avenue caused by the removal of the Spur in East 42nd Street and which item in the sum of $80,000.00 is included in the total award of $975,-438.00 made to the Manhattan Railway Company for Damage No. 1; and it is further unanimously

Ordered, That the said Final Decree and the within proceeding be and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award 75
for Damage No. 1 in the above entitled proceeding in accordance with the opinion of this Court and to make the assessment for the benefit in the above entitled proceeding in accordance with law."

A motion having been made by The City of New York, Bowman Biltmore Hotels Corporation and others, Cooper Union for the Advancement of Science and Art, Robert Walton Goelet and others, Pershing Square Building Corporation, Manhattan Storage and Warehouse Company, and Seward W. Ehrich, Inc., appellants, for

76 *Final Decree*

leave to appeal to the Court of Appeals from the order of this Court entered herein on the 3rd day of June, 1930, it was

By an order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, bearing date the 18th day of July, 1930 and entered in the office of the Clerk of the said Appellate Division on the same day "Unanimously ordered that the said motion be and the same is hereby denied."

77 Pursuant to the aforesaid order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, bearing date the 9th day of May, 1930, entered in the office of the Clerk of said Appellate Division on the 3rd day of June, 1930, a certified copy of such order was duly filed in the office of the Clerk of the County of New York on the 26th day of June, 1930, and the order of the said Appellate Division bearing date the 18th day of July, 1930, entered in the office of the Clerk of said Appellate Division on the same day, the proceeding was regu-

78 larly brought on for trial and tried before Hon. George V. Mullan, one of the Justices of the Supreme Court at a Special Term, Part III held in and for the County of New York on the 8th day and the 9th day of December, 1930,

That thereafter and before the signing of the final decree herein, Mr. Justice Mullan died and the proceeding having been regularly brought on for trial and tried before me one of the Justices of the Supreme Court, at a Special Term, Part VI held in and for the County of New York on the 8th day of February, 1932, and I having viewed the real property acquired herein and the

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real property included within the area of assessment determined by the Board of Estimate and Apportionment by resolution adopted on the 29th day of June, 1923, and after considering the proofs and testimony heretofore offered by the claimant or claimants and The City of New York made an estimate of the compensation which ought to be made to owners and persons interested in said property, and an estimate of the assessment of the value of the benefit and advantage of the improvement to the respective owners of the real property within the area of assessment for benefit, and having made and signed the tabular abstract of Supplemental and Amended estimated damage and the tabular abstract of Supplemental and Amended estimated assessment for benefit, constituting the Supplemental and Amended tentative decree of the Court as to awards for damage and as to assesments for benefit, on the 1st day of March, 1932, which tentative decree was filed in the office of the Clerk of the County of New York on the 7th day of March, 1932, and the Corporation Counsel of The City of New York having caused to be published in fifteen consecutive issues of the "City Record," the notice required by Section 1002 of the Greater New York Charter, and objections having been filed to the said Supplemental and Amended tentative decree, and the Corporation Counsel having on the 5th day of April, 1932, at 10 o'clock in the forenoon, the date fixed in said notice, applied to me to fix a time when I would hear parties who had filed objections to the said Supplemental and Amended tentative decree, and the said hearing having duly come on to be heard

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82 *Final Decree*

on the 5th day of April, 1932, and after hearing the objectors to the said Supplemental and Amended tentative decree, and after considering and examining the objections to the said Supplemental and Amended tentative decree, I the Justice who made the Supplemental and Amended tentative decree, gave instructions to the Corporation Counsel as to the preparation of the Supplemental and Amended final decree, and the said Supplemental and Amended final decree having been prepared in accordance with the provi-
83 sions of Section 1003 of the Greater New York Charter, as amended, and the damage map showing the separate parcels of real property to be acquired, and the benefit maps showing the separate parcels of real property within the area of assessments, adopted by the Board of Estimate and Apportionment on the 29th day of June, 1923, having been respectively attached to and made a part of this, the Supplemental and Amended final decree, and a bill of costs, charges and expense of this proceeding taxed by order of this Court bearing date the 29th day of July, 1924
84 and entered in the office of the Clerk of the County of New York on the 29th day of July, 1924, at the sum of Eleven Thousand Six Hundred and Twenty-five Dollars ($11,625.00), and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 6th day of May, 1925 and entered in the office of the Clerk of the County of New York on the 6th day of May, 1925, at the sum of Nine Thousand Eight Hundred Dollars ($9,800.00), and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date

the 13th day of January, 1926 and entered in the office of the Clerk of the County of New York on the 14th day of January, 1926, at the sum of Three Thousand and Twenty-five Dollars ($3,025.00), and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 8th day of December, 1927 and entered in the office of the Clerk of the County of New York on the 8th day of December, 1927, at the sum of Thirty-five Thousand, Six Hundred-Eighty-four Dollars and Two Cents ($35,684.02) and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 24th day of December, 1930, and entered in the office of the Clerk of the County of New York on the 24th day of December, 1930, at the sum of Twelve Thousand Five Hundred Dollars ($12,500.00) and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 15th day of January, 1931, and entered in the office of the Clerk of the County of New York on the 15th day of January, 1931, at the sum of Five Thousand Dollars ($5,000.00) and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 24th day of December, 1931 and entered in the office of the Clerk of the County of New York on the 24th day of December, 1931, at the sum of Five Thousand One Hundred Forty-six Dollars and Twelve Cents ($5,146.12).

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The Board of Estimate and Apportionment on the 23rd day of November, 1923, adopted the following resolution:

"Resolved, That the board of Estimate and

88 *Final Decree*

Apportionment, in pursuance of the provisions of said Special Act as so amended and supplemented, and the provisions of the Greater New York Charter, as amended, including section 976 thereof, hereby directs, as authorized by said acts, that title in fee to and the right to remove

'The elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within and obstructing said part of said street constituting the existing 42nd Street
89 Spur, described as follows to wit:

Beginning at the corner formed by the intersection of the southerly line of East 42nd Street with the easterly line of Park Avenue, thence westerly along the westerly prolongation of the southerly line of East Forty-second street, distance 50 feet; thence northerly at right angles to the line of East 42nd Street, distance One Hundred feet, to a point in the northerly line of East 42nd Street; thence easterly along the northerly line of East 42nd Street, distance Nine Hundred
90 and twenty-seven feet; thence southerly at right angles to the line of East 42nd Street, distance Twenty-one Feet; thence easterly and parallel with the line of East 42nd Street, distance Twenty-four feet; thence southerly at right angles to the line of East 42nd Street, distance Thirty-six feet; thence southerly and deflecting to the left Thirty-seven degrees, Thirty Minutes, Fifteen Seconds, distance Fifty-four and Two tenths feet, to a point in the southerly line of East 42nd Street, as it is prolonged across 3rd Avenue, thence westerly along the said prolongation of the southerly line of East 42nd Street, distance

Thirty-four feet to the corner formed by the intersection of the southerly line of East 42nd Street with the westerly line of 3rd Avenue; thence westerly along the southerly line of East 42nd Street, distance Nine Hundred feet to the point or place of beginning.'

—and all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Company or by whomsoever owned or controlled under which said elevated structure, tracks, stations, platforms, stairways and appurtenances were constructed and are maintained; also to all rights, easements and franchises, by whomsoever owned or controlled, to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in said part of said street and to operate cars or trains of any kind whatsoever thereon or thereover except any existing franchise rights of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities, including stairways in connection with and immediately adjacent to its 3rd Avenue Station at 42nd Street as the Transit Commission may determine to be necessary for the public convenience and necessity, in the Borough of Manhattan, The City of New York, shall vest in The City of New York on the 7th day of December, 1923."

That the sums of money awarded for the damage sustained by reason of this proceeding, together with interest on the awards for the property acquired by The City of New York herein pursuant to the provisions of Chapter 635 of the

94 Laws of 1923 from the date of vesting of title in this proceeding, as aforesaid, to the date of this the final decree, amount to the sum of Nine Hundred Thirty-two Thousand One Hundred Twenty-five Dollars and Thirty-eight Cents ($932,125.38).

Interest is included on the awards for the property acquired by the City of New York herein pursuant to the provisions of Chapter 635 of the Laws of 1923, as part of the compensation, where title has vested in The City of New York, as aforesaid, to the date of this the final decree, and this amount of interest is included in the assessments for benefit; and it is

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Adjudged and Decreed, That the sums of money assessed for benefit by reason of this improvement amount to the sum of One Million and Fourteen Thousand, Nine Hundred and Five Dollars and Fifty-two Cents ($1,014,905.52) which is imposed upon the real property within the area of assessment fixed and determined by the Board of Estimate and Apportionment by resolution adopted on the 29th day of June, 1923, and in accordance with the provisions of said resolution of the Board of Estimate and Apportionment.

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Adjudged and Decreed, That the amounts set opposite the respective damage parcels numbers in the column headed "Final Awards" in the Supplemental and Amended tabular abstracts of awards for damage, which is made part of this, the Supplemental and Amended final decree, constitute and are the just compensation which the respective owners are entitled to receive from the City of New York; and it is further

Adjudged and Decreed, That the amounts set opposite the respective benefit parcels numbers

97

in the column headed "Benefit Final Assessments" in the Supplemental and Amended tabular abstract of assessments for benefit, which is made part of this, the Supplemental and Amended final decree, constitute the sums of money to be paid to The City of New York for the benefit and advantage derived by reason of the said improvement by the respective owners of each parcel so assessed; and it is further

Adjudged and Decreed, That the sums of money imposed upon the real property within the area of assessment fixed and determined by the Board of Estimate and Apportionment, has been distributed in proportion to the benefit which such real property received, but not in excess of such benefit; and it is further

98

Adjudged and Decreed, That each parcel of real property assessed has been valued by the Court as of the date of this, the final decree, as enhanced by reason of this improvement, and that in no case does the assessment for benefit exceed one-half the value of the property so assessed and it is further

99

Ordered and Adjudged, That every parcel of real property within the area of assessment for benefit has been assessed its share of the cost and expense of the proceeding in proportion to the amount of actual benefit which each parcel of real property received from the improvement, but not in excess of such benefit.

Enter: P. I., J. S. C.

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## Final Decree (Abstract of Estimate) of Supreme Court Appealed From

New York Supreme Court, First Department.

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In the Matter of the application of the City of New York, relative to acquiring title to the tracks, structures, station and appurtenances of the Manhattan Railway Company in East 42nd Street, Borough of Manhattan, City of New York and
101 also to the rights, easements, and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, station and appurtenances.

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Abstract of Estimate of the Supreme Court in the above entitled matter made and deposited according to law.

Awards for Damage.

102

| Map Numbers | Owners | Damage Supplemental Estimated | and Amended Final |
|---|---|---|---|
| 1 | Manhattan Railway Company | $619,352.41 | $619,352.41 |
| | Interest | | 312,772.97 |
| | Subject to First Mortgage held by Central Union Trust Company of New York as Trustees to secure the payment of bonds outstanding aggregating $40,670,000.00 | | |
| | Subject to Second Mortgage held by the Equitable Trust Company | | |

of New York as Trustees to secure the payment of bonds outstanding aggregating $4,523,000.00

Subject to Indenture of Lease dated January 1st 1903, for a period of 999 years from November 1st 1875 to the Interborough Rapid Transit Company.

This award is made for the property acquired by The City of New York herein pursuant to the provisions of Chap. 635 of the Laws of 1923. 104

| | |
|---|---|
| Total | $932,125.38 |

Dated, New York, March 1st, 1932.

Phoenix Ingraham, Justice of the Supreme Court of the State of New York.

Dated, New York, May 7, 1932.

Phoenix Ingraham, Justice of the Supreme Court of the State of New York. 105

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## Damage Maps Attached to Final Decree of Supreme Court

(These maps are printed at page 1888 of Volume IV of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

106

## Final Decree (Abstract of Benefit) of Supreme Court Appealed From

New York Supreme Court, First Department.

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In the Matter of the Application of The City of New York relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever
107 owned in East 42nd Street constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

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Abstract of Benefit of the Supreme Court in
108 the above-entitled matter made and deposited according to law.

## *Final Decree (Abstract of Benefit)*

109

ASSESSMENT FOR BENEFIT

| Ward Nos. Block | Lot | Map Nos. | Owners or Occupants | Supplemental and Amended Benefit Benefit Estimated | Final Assessment |
|---|---|---|---|---|---|
| 277 | 4 | 1 | J. R. Ford | $840.42 | $764.24 |
| | 2 | 2 | Schuyler S. Parsons | 1,537.64 | 1,398.26 |
| | 1 | 3 | S. P. Morton Est. | 7,659.07 | 6,964.81 |
| | 6 | 4 | Oceanic Inv. Co. | 1,874.03 | 1,704.16 |
| | 7 | 5 | " " " | 1,558.94 | 1,417.63 |
| | 8 | 6 | Jermiah Milbank *et al.* | 5,378.86 | 4,891.29 |
| | 10 | 7 | Geo. E. Watson | 2,036.19 | 1,851.62 |
| | 11 | 8 | Fritz G. Schmidt | 2,071.20 | 1,883.46 |
| | 12 | 9 | Adolph Lewisohn & Sons | 2,394.45 | 2,177.41 |
| | 14 | 10 | Anahma Rlty. Co. | 13,083.50 | 11,897.55 |
| | 20 | 11 | Dunlevy Milbank | 18,451.95 | 16,779.37 |
| | 27 | 12 | N. Y. C. & H. R. R. Co. | 8,019.41 | 7,292.50 |
| 280 | 1 | 13 | " " " | 65,750.02 | 59,789.84 |
| | 30 | 14 | N. Y. State Rlty. & Term. Co. | 129 470.87 | 117,734.22 |
| 297 | 23 | 15 | Cooper Union Inst. | 81,632.78 | 74,232.70 |
| | 45½ | 16 | Robt. Goelet Est. | 389.50 | 354.20 |
| | 27 | 17 | " " " | 10,811.93 | 9,831.82 |
| | 28 | 18 | " " " | 10,220.31 | 9,293.83 |
| | 29 | 19 | Thos. F. Fox | 11,097.86 | 10,091.83 |
| | 30 | 20 | Bridget D. Fitzpatrick Est. | 11,252.75 | 10,232.68 |
| | 31 | 21 | Robt. F. Westcott Est. | 23,532.37 | 21,399.14 |
| | 36 | 22 | Central Manhattan Properties | 1,078.30 | 980.55 |
| | 32½ | 23 | " " " | 12,146.95 | 11,045.83 |
| | 35 | 24 | " " " | 1,153.19 | 1,048.65 |
| | 34½ | 25 | " " " | 1,527.22 | 1,388.77 |
| | 33 | 26 | " " " | 18,830.93 | 17,123.89 |
| 316 | 4 | 27 | Chas. H. Randall | 242.55 | 220.56 |
| | 3 | 28 | James Kelley Est. | 938.02 | 852.99 |
| | 1 | 29 | " " " | 3,769.39 | 3,427.69 |
| | 5 | 30 | St. Bartholomew's Church | 6,960.88 | 6,329.87 |
| | 10 | 31 | " " " | 2,513.65 | 2,285.78 |
| | 12 | 32 | American Railway Expr. Co. | 6,694.49 | 6,087.64 |
| | 17 | 33 | Albert Gerstendorfer | 804.37 | 731.45 |
| | 18 | 34 | " " | 2,784.36 | 2,531.95 |
| | 21 | 35 | Michele Marraffino | 850.78 | 773.66 |
| | 22 | 36 | Geo. Ehret | 812.10 | 738.48 |
| | 26 | 37 | Philip M. Schell Est. | 123.75 | 112.53 |
| | 25 | 38 | " " " " | 247.50 | 225.06 |
| | 24 | 39 | " " " " | 371.25 | 337.60 |
| | 23 | 40 | Wilson Marshall | 1,734.95 | 1,577.68 |

110

111

112 *Final Decree (Abstract of Benefit)*

| | | | | | | |
|---|---|---|---|---|---|---|
| | 1276 | 69 | 41 | Oceanic Investing Co. | 6,950.69 | 6,320.63 |
| | | 68 | 42 | Augustine Pottier Est. | 1,819.72 | 1,654.77 |
| | | 1 | 43 | Oceanic Investing Co. | 4,625.53 | 4,206.25 |
| | | 66 | 44 | Isidore S. Korn | 1,923.57 | 1,749.21 |
| | | 65 | 45 | Caroline Cachard Est. | 1,959.42 | 1,781.81 |
| | | 64 | 46 | David W. Bishop | 1,994.33 | 1,813.55 |
| | | 63 | 47 | Anna P. D. Parsons Est. | 2,029.26 | 1,845.32 |
| | | 62 | 48 | Lily H. Weinberg | 2,064.18 | 1,877.07 |
| | | 58 | 49 | 42nd St. Mad. Ave. Co. | 14,665.25 | 13,335.92 |
| | | 4 | 50 | Augustine Pottier Est. | 650.42 | 591.47 |
| | | 51 | 51 | Anahma Rlty. Corp. | 13,122.58 | 11,933.09 |
| | | 48 | 52 | Athens Hotel Co. | 4,138.36 | 3,763.24 |
| | | 42 | 53 | Lincoln Safe Deposit Co. | 20,805.12 | 18,919.24 |
| | | 33 | 54 | Subway Realty Co. | 16,210.28 | 14,740.90 |
| 113 | 1296 | 1 | 55 | Pershing Sq. Bldg. Corp. | 59,002.99 | 53,654.31 |
| | | 63 | 56 | Bowery Savings Bank | 49,007.80 | 44,565.19 |
| | | 61 | 57 | 42nd St. R. R. Co. | 23,155.30 | 21,056.25 |
| | | 14 | 58 | Manhattan Storage & Warehouse Co. | 59,061.92 | 53,707.90 |
| | | 46 | 59 | Robt. Goelet Est. | 86,251.70 | 78,432.89 |
| | | 20 | 60 | " " " | 4,511.08 | 4,102.15 |
| | | 44 | 61 | Wm. Volk | 19,296.07 | 17,546.86 |
| | | 43 | 62 | Geo. Ehret | 19,206.07 | 17,546.86 |
| | | 41 | 63 | Bernheim Rlty. Co. | 19,296.07 | 17,546.86 |
| | | 40 | 64 | William Volk | 31,306.60 | 28,468.62 |
| | | 37 | 65 | " " | 3,405.63 | 3,096.91 |
| | 1315 | 49 | 66 | John Curry Est. | 4,218.60 | 3,836.18 |
| | | 48 | 66a | 202-204 East 42nd St. Corp. | 1,365.47 | 1,241.69 |
| | | 51 | 67 | Marie S. Buck | 488.14 | 443.89 |
| | | 52 | 68 | " " " | 319.58 | 290.61 |
| | | 44 | 69 | City of New York | 8,821.25 | 8,021.60 |
| 114 | | 41 | 70 | Hup. Realty Co. | 1,207.06 | 1,097.63 |
| | | 40 | 71 | " " " | 1,116.69 | 1,015.46 |
| | | 39 | 72 | " " " | 1,089.68 | 990.90 |
| | | 38 | 73 | " " " | 1,075.76 | 978.24 |
| | | 37 | 74 | " " " | 1,060.10 | 964.00 |
| | | 36 | 77 | " " " | 1,501.32 | 1,365.24 |
| | | 35 | 78 | Morris Blum Est. | 964.28 | 876.87 |
| | | 34 | 79 | Jennie E. Gordon | 925.79 | 841.47 |
| | | 33 | 80 | Hup. Rlty. Co. | 887.22 | 806.79 |
| | | 32 | 81 | Walter Longman | 848.65 | 771.72 |
| | | 31½ | 82 | Emma S. Stanley | 810.07 | 736.64 |
| | | 31 | 83 | Chas. F. Bound | 1,711.70 | 1,556.53 |
| | | 30 | 84 | " " " | 366.79 | 333.54 |
| | | 29 | 85 | Hannah Kemfner Est. | 244.53 | 222.36 |
| | | 28 | 86 | Louis A. Loew | 122.27 | 111.19 |
| | | 27 | 87 | Wm. Schweirman Est. | 88.07 | 80.09 |
| | | 26 | 88 | Lizzie Schmitt | 88.07 | 80.09 |

## *Final Decree (Abstract of Benefit)*

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| | | | | | |
|---|---|---|---|---|---|
| | 25 | 89 | Lillian Hof | 88.07 | 80.09 |
| | 24 | 90 | Hup. Rlty. Co. | 88.07 | 88.09 |
| | 19 | 91 | Jennie E. Gordon | 476.81 | 433.59 |
| | 14 | 92 | Hup. Rlty. Co. | 124.70 | 113.40 |
| | 13 | 93 | " " " | 111.06 | 100.99 |
| | 6 | 94 | Geo. H. Earle Jr. | 123.24 | 112.07 |
| | 5 | 95 | Marie Kidwell | 123.24 | 112.07 |
| | 4 | 96 | " " | 96.57 | 87.82 |
| | 3 | 97 | Francis Maloney | 96.57 | 87.82 |
| | 2½ | 98 | " " | 94.64 | 86.06 |
| | 2 | 99 | Hy. Parkhill | 94.64 | 86.06 |
| | 1 | 100 | Bernard A. Reinold | 94.64 | 86.06 |
| 1314 | 1 | 101 | Chas. E. Tyte | 93.93 | 85.42 |
| | 2 | 102 | " " " | 98.34 | 89.43 |
| | 3 | 103 | Iscar Brockner Est. | 102.76 | 93.45 |
| | 4 | 104 | " " " | 107.15 | 97.44 |
| | 48 | 105 | Marg't D. Wise | 146.41 | 133.14 |
| | 47 | 106 | Clara B. Staubsandt | 95.41 | 86.76 |
| | 46 | 107 | Anna A. Johnston | 121.68 | 110.65 |
| | 45 | 108 | " " " | 82.01 | 74.58 |
| | 44½ | 109 | " " " | 96.75 | 87.98 |
| | 44¼ | 110 | Heyer Rlty. Co. | 96.75 | 87.98 |
| | 44 | 111 | Peter Albert | 146.71 | 133.41 |
| | 43 | 112 | " " | 146.71 | 133.41 |
| | 42 | 113 | Chas. Pabst | 139.37 | 126.74 |
| | 41 | 114 | Robt. E. Kelley | 125.43 | 114.06 |
| | 40 | 115 | " " " | 118.83 | 108.06 |
| | 39 | 116 | " " " | 118.83 | 108.06 |
| | 38 | 117 | Louise S. Kelley | 112.23 | 102.06 |
| | 37½ | 118 | Robt. E. Kelley | 112.23 | 102.06 |
| | 37 | 119 | Ludwig Vogel | 105.64 | 96.06 |
| | 36 | 120 | Arnold Serian | 105.64 | 96.06 |
| | 35 | 121 | " " | 99.02 | 90.04 |
| | 34 | 122 | Margaret G. Byrne | 99.02 | 90.04 |
| | 33 | 123 | " " " | 92.43 | 84.05 |
| | 32 | 124 | Emilie Sachse | 106.80 | 97.12 |
| | 31 | 125 | Chas. W. Paul | 99.18 | 90.19 |
| | 30 | 126 | Nicholas I. Herrick | 99.18 | 90.19 |
| | 29 | 127 | Sadie E. F. D'Aguiar | 88.02 | 80.04 |
| | 28½ | 128 | Agnes Carinau | 68.62 | 62.40 |
| | 28 | 129 | Chas. W. Saue | 53.49 | 48.64 |
| | 27½ | 130 | Sarah Beuttenmeller | 47.14 | 42.87 |
| | 27 | 131 | Florence S. Roome | 46.13 | 41.95 |
| | 26 | 132 | " " " | 45.14 | 41.05 |
| | 25 | 133 | John H. Glander | 84.76 | 77.08 |
| | 23 | 134 | Rosehill Rlty. Corp. | 125.72 | 114.32 |

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| | | | | | |
|---|---|---|---|---|---|
| | 21 | 135 | " " " | 117.93 | 107.24 |
| | 4½ | 136 | Isabel B. Tyte | 102.70 | 93.39 |
| | 5 | 137 | Teresa A. Colton | 102.70 | 93.39 |
| | 6 | 138 | Spiros Karageorges | 77.75 | 70.70 |
| | 7 | 139 | " " | 116.62 | 106.05 |
| | 8 | 140 | Elizabeth Blinks | 91.69 | 83.38 |
| | 9 | 141 | August H. Bade | 91.69 | 83.38 |
| | 10 | 142 | Conrad Schlosser | 86.19 | 78.38 |
| | 11 | 143 | Chas. F. Pietzsch | 86.19 | 78.38 |
| | 12 | 144 | Prospect Hill Rlty. Co. | 121.03 | 110.06 |
| | 14 | 145 | " " " " | 112.78 | 102.56 |
| | 16 | 146 | Henry Roffmann | 104.53 | 95.06 |
| | 17 | 147 | Robt. Johanson | 96.27 | 87.54 |
| | 18 | 148 | Edgar J. Pitshke | 64.18 | 58.36 |
| 119 | 19 | 149 | Rosehill Rlty. Corp. | 86.85 | 78.98 |
| | 20 | 150 | " " " " | 86.85 | 78.98 |
| 920 | 1 | 151 | Thos. M. Brennan | 41.83 | 38.04 |
| | 2 | 152 | " " " | 46.24 | 42.05 |
| | 3 | 153 | Thomas S. Borfiglio | 54.58 | 49.63 |
| | 4 | 154 | Minnie Wagner | 109.20 | 99.30 |
| | 68 | 154a | Otto Wagner | 24.14 | 21.95 |
| | 67 | 155 | Mary E. Maguire Est. | 76.33 | 69.41 |
| | 66 | 156 | Etta S. Brill | 56.07 | 50.99 |
| | 64 | 157 | Annie M. Harrison | 118.27 | 107.55 |
| | 63 | 158 | Diedrich Werfelman | 63.51 | 57.73 |
| | 62 | 159 | Annie M. Harrison | 46.34 | 42.14 |
| | 61 | 160 | " " " | 46.34 | 42.14 |
| | 60 | 161 | John F. Gerdes | 159.07 | 144.65 |
| | 58 | 162 | Susanna V. Cahill | 66.09 | 60.10 |
| | 57 | 163 | " " " | 66.09 | 60.10 |
| 120 | 56 | 164 | Kate K. Kenney | 63.27 | 57.53 |
| | 55 | 165 | City of New York | 70.60 | 64.20 |
| | 53 | 166 | Salvation Army | 142.31 | 129.41 |
| | 52 | 167 | Hannah Kemfiner Est. | 86.18 | 78.37 |
| | 50 | 168 | " " " | 80.69 | 73.38 |
| | 49 | 169 | Jos. Hermann | 77.94 | 70.88 |
| | 48 | 170 | Sydney Ballin | 75.19 | 68.37 |
| | 42 | 172 | Kautack, Heath & Warman | 85.57 | 77.81 |
| | 41 | 173 | Otto Pfleger | 46.21 | 42.02 |
| | 40 | 174 | Mary M. Vaughan | 32.87 | 29.89 |
| | 39 | 175 | Jos. E. Jahraus | 32.87 | 29.89 |
| | 38 | 176 | " " " | 32.87 | 29.89 |
| | 28 | 177 | Cath. Sooram Est. | 34.52 | 31.39 |
| | 29 | 178 | " " " | 35.15 | 31.96 |
| | 30 | 179 | Wolf Baumgarten | 35.77 | 32.53 |
| | 31 | 180 | Wm. J. Borgelt | 36.37 | 33.07 |

*Final Decree (Abstract of Benefit)*

| | | | | | |
|---|---|---|---|---|---|
| | 32 | 181 | Aron Wexler | 36.99 | 33.64 |
| | 33 | 182 | Peter F. Kane | 58.40 | 53.11 |
| | 34 | 183 | Louise S. Wilson | 61.66 | 56.07 |
| | 35 | 184 | Jas. Hume Est. | 56.14 | 51.05 |
| | 36 | 185 | Patrick Purcell | 81.23 | 73.87 |
| | 5 | 186 | Thos. M. Brennan | 26.39 | 24.00 |
| | 6 | 187 | D. H. Schult Est. | 33.22 | 30.21 |
| | 7 | 188 | Nathan Grulstein | 55.36 | 50.34 |
| | 8 | 188a | Cath. M. M. Kelley | 37.78 | 34.36 |
| | 9 | 189 | Bridget O'Brien | 38.14 | 34.68 |
| | 10 | 190 | Frank N. Glover | 38.14 | 34.68 |
| | 11 | 191 | Honora K. Brennan | 38.14 | 34.68 |
| | 12 | 192 | Jos. Garry Est. | 38.14 | 34.68 |
| | 13 | 193 | Peter A. Juley | 45.78 | 41.63 |
| | 14 | 194 | Thos. F. Quinlan | 44.78 | 40.72 |
| | 15 | 195 | Hy. Rifiel | 88.96 | 80.90 |
| | 17 | 196 | Bridget M. McCauley | 41.80 | 38.01 |
| | 18 | 197 | " " " | 42.25 | 38.42 |
| | 19 | 198 | Robt. H. Toner | 41.80 | 38.01 |
| | 20 | 199 | Rees & Rees | 287.78 | 261.69 |
| | 23 | 200 | " " " | 36.38 | 33.08 |
| | 24 | 201 | " " " | 36.81 | 33.47 |
| | 25 | 202 | Hup. Realty Co. | 54.17 | 49.26 |
| | 26 | 203 | " " " | 49.99 | 45.46 |
| | 27 | 204 | " " " | 49.99 | 45.46 |
| 919 | 1 | 205 | Arthur McCooey | 20.72 | 18.84 |
| | 2 | 206 | Hanchen Rothschild Est. | 22.79 | 20.72 |
| | 3 | 207 | Fredk. Hof | 24.86 | 22.60 |
| | 4 | 208 | Lillian " | 24.19 | 22.00 |
| | 5 | 209 | Adolph Auerbach | 38.63 | 35.13 |
| | 63 | 210 | Katie Moeschen | 41.60 | 37.83 |
| | 62 | 211 | " " | 44.57 | 40.53 |
| | 61 | 212 | Charlotte A. Mount Est. | 35.65 | 32.42 |
| | 60 | 213 | " " " " | 37.89 | 37.46 |
| | 59 | 214 | Jno. Lynch Est. | 50.14 | 45.60 |
| | 58 | 215 | " " " | 38.63 | 35.13 |
| | 57 | 216 | Jno. C. Heaton Est. | 30.04 | 27.32 |
| | 56 | 217 | Anna Egan | 28.64 | 26.04 |
| | 55 | 218 | Jno. J. " | 30.04 | 27.32 |
| | 54 | 219 | " " " | 28.64 | 26.04 |
| | 53 | 220 | Duncan Phyfe Est. | 39.12 | 35.57 |
| | 52 | 221 | Jos. H. Fitzpatrick | 39.12 | 35.57 |
| | 51 | 222 | J. Homer Cudmore | 39.12 | 35.57 |
| | 50 | 223 | Thos. F. Quinlan | 39.12 | 35.57 |
| | 49 | 224 | Thos. M. Brennan | 39.12 | 35.57 |
| | 48 | 225 | " " " | 39.12 | 35.57 |

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| | | | | | |
|---|---|---|---|---|---|
| | 47 | 226 | Jno. C. G. Hupfel Bwg. Co. | 42.83 | 38.55 |
| | 46 | 227 | " " " " " " | 69.87 | 63.54 |
| | 44 | 228 | " " " " " " | 44.02 | 40.03 |
| | 43 | 229 | " " " " " " | 44.02 | 40.03 |
| | 42 | 230 | " " " " " " | 51.35 | 46.70 |
| | 16 | 231 | " " " " " " | 410.80 | 373.56 |
| | 37 | 232 | David Taylor | 31.85 | 28.96 |
| | 36 | 233 | " " | 31.69 | 28.82 |
| | 35 | 234 | Mary C. Finley | 44.01 | 40.02 |
| | 34 | 235 | Fredk. Gebien | 39.68 | 36.08 |
| | 33 | 236 | " " | 39.54 | 35.96 |
| | 32 | 237 | Henry Piffel | 43.06 | 39.16 |
| | 31 | | " " | 47.99 | 43.64 |
| | 29 | 239 | " " | 46.61 | 42.39 |
| 125 | 28 | 240 | " " | 43.65 | 39.69 |
| | 27 | 241 | " " | 48.04 | 43.69 |
| | 6 | 242 | Anna B. Pfeming | 72.78 | 66.18 |
| | 9 | 243 | Eliz. Neumann | 27.51 | 25.02 |
| | 10 | 244 | Elsen Quinn | 36.67 | 33.35 |
| | 11 | 245 | Hup. Realty Co. | 36.67 | 33.35 |
| | 12 | 246 | " " " | 33.08 | 30.08 |
| | 13 | 247 | Jas. Armstrong | 33.08 | 30.08 |
| | 14 | 248 | Jno. C. G. Hupfel Bwg. Co. | 33.08 | 30.08 |
| | 15 | 249 | " " " " " " | 33.08 | 30.08 |
| | 23 | 251 | Henry Piffel | 36.67 | 33.35 |
| | 24 | 252 | " " | 36.67 | 33.35 |
| | 25 | 253 | " " | 37.73 | 34.31 |
| 1296 | 22 | 255 | Robt. Goelet Est. | 438.89 | 399.11 |
| | 25 | 256 | Jacob Weeks Est. | 713.02 | 648.39 |
| 126 | 30 | 257 | Kate W. Winthrop | 146.71 | 133.41 |
| | 31 | 258 | " " " | 146.71 | 133.41 |
| | 32 | 259 | " " " | 146.71 | 133.41 |
| | 36 | 260 | Mary Wachter | 183.26 | 166.65 |
| | 35 | 261 | Wm. J. Tierney Est. | 183.26 | 166.65 |
| | 32½ | 262 | Claus H. Doscher | 96.87 | 88.09 |
| | 34 | 263 | " " " | 122.77 | 111.64 |
| | 33 | 264 | " " " | 123.18 | 112.01 |
| 1295 | 23 | 265 | Mary S. Tonetti | 164.60 | 149.68 |
| | 21 | 266 | Cosmoclub Rlty. Corp. | 174.58 | 158.76 |
| | 20 | 267 | Susie M. Faust | 89.78 | 81.64 |
| | 53 | 268 | Jno. A. " | 88.03 | 80.05 |
| | 52 | 269 | Jas. G. Rogers | 90.22 | 82.04 |
| | 51 | 270 | Kate E. Henesey | 92.43 | 84.05 |
| | 50½ | 271 | Geo. G. Kip | 94.62 | 86.04 |
| | 50 | 272 | Eliz. Kip Est. | 96.83 | 88.05 |
| | 50¼ | 273 | Geo. G. Kip | 79.25 | 72.07 |

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| | | | | | | |
|---|---|---|---|---|---|---|
| | 48 | 274 | Marie C. Heine | 459.26 | 417.63 | |
| | 46 | 275 | Phillips Weeks Est. Corp. | 161.35 | 146.72 | |
| | 45 | 276 | Tiffany & Co. | 147.18 | 133.84 | |
| | 44 | 277 | Edw. S. Boylston | 145.30 | 132.13 | |
| | 41 | 278 | Thos. J. McCahill | 440.13 | 400.24 | |
| | 40½ | 279 | Saul Smyth Jr. | 64.26 | 58.44 | |
| | 33 | 280 | Maria S. Seifert | 117.42 | 106.78 | |
| | 34 | 281 | Robt. T. Reiley | 122.93 | 111.79 | |
| | 35 | 282 | Sarah E. Connell (hr.) | 128.44 | 116.80 | |
| | 36 | 283 | U. S. Trust Co. (trs.) | 133.95 | 121.81 | |
| | 37 | 284 | John P. Pils | 104.44 | 94.97 | |
| | 37½ | 285 | Rachel Berg (hr.) | 108.57 | 98.73 | |
| | 38 | 286 | Emma Herbst | 112.69 | 102.48 | |
| | 39 | 287 | Jas. Rozell Est. Inc. | 86.58 | 78.73 | |
| | 40 | 288 | Patk. J. Cuskley | 121.34 | 110.34 | 128 |
| | 24 | 289 | Mary S. Tonetti | 164.32 | 149.43 | |
| | 25 | 290 | H. A. Pomroy | 69.42 | 63.13 | |
| | 26 | 291 | Josephine P. Hendricks | 72.54 | 65.96 | |
| | 27 | 292 | Wm. S. Miller | 133.74 | 121.62 | |
| | 28 | 293 | Alice A. De Samar | 121.68 | 110.65 | |
| | 29 | 294 | Duncan Phyfe Est. | 103.62 | 94.23 | |
| | 30 | 295 | " " " | 102.70 | 93.39 | |
| | 31 | 296 | 149 E. 40th St. Co. | 205.40 | 186.78 | |
| 895 | 69 | 297 | Gould Coupler Co. | 71.73 | 65.23 | |
| | 70 | 298 | " " " | 69.35 | 63.06 | |
| | 71 | 299 | " " " | 66.96 | 60.89 | |
| | 72 | 300 | Adella Bloomenfeld | 64.56 | 58.71 | |
| | 73 | 301 | Cosul Rlty. Corp. | 79.19 | 72.01 | |
| | 24 | 302 | Mary Schwab | 61.66 | 56.07 | |
| | 25 | 303 | Emilia G. Stolte | 45.39 | 41.28 | |
| | 26 | 304 | Wm. P. Bannister | 42.49 | 38.64 | 129 |
| | 27 | 305 | Mary P. Tappian | 39.59 | 36.00 | |
| | 28 | 306 | Wm. M. Saffan Est. | 42.20 | 38.37 | |
| | 68 | 307 | Mary S. Tonnetti | 56.94 | 51.78 | |
| | 67 | 308 | Jas. W. McKee | 56.94 | 51.78 | |
| | 66 | 309 | Annie C. B. Foster | 295.77 | 268.96 | |
| | 63 | 310 | Jas. F. A. Clark | 197.19 | 179.32 | |
| | 60 | 311 | Jos. B. Dickson | 71.13 | 64.68 | |
| | 61 | 311a | F. Bossong | 16.71 | 15.20 | |
| | 59 | 312 | Isabella " | 73.16 | 66.53 | |
| | 58 | 313 | Geo. Ehret | 151.63 | 137.89 | |
| | 56 | 314 | Chas. C. Tegethoff | 105.37 | 95.82 | |
| | 55 | 315 | John Devine Est. | 19.97 | 18.16 | |
| | 54 | 316 | Patk. F. Devine | 64.19 | 58.37 | |
| | 53 | 317 | Jno. Devine Est. | 82.72 | 75.22 | |
| | 52 | 318 | John G. Kerkmann | 78.45 | 71.34 | |

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| | | | | | |
|---|---|---|---|---|---|
| | 51 | 319 | Henriette Greenebaum | 74.17 | 67.45 |
| | 50 | 320 | Max Meyer | 50.51 | 45.93 |
| | 49 | 321 | Joseph Newman | 54.56 | 49.61 |
| | 48 | 322 | Saul Kavalier | 44.86 | 40.79 |
| | 47 | 323 | Joseph Goldstein | 42.91 | 39.02 |
| | 46 | 324 | Ernest G. Schwarz | 23.18 | 21.08 |
| | 45 | 325 | Margt. S. Aldrich | 57.76 | 52.52 |
| | 44 | 326 | " " " | 16.04 | 14.59 |
| | 43 | 327 | " " " | 16.94 | 15.40 |
| | 42 | 328 | Patrick Coughlin | 44.38 | 40.36 |
| | 41 | 329 | " " | 62.34 | 56.69 |
| | 39 | 330 | N. Y. Edison Co. | 84.29 | 76.65 |
| | 38 | 331 | Lida D. Tilson | 41.66 | 37.88 |
| | 34 | 332 | 143 E. 39th St. Co. | 166.19 | 151.13 |
| 131 | 33 | 333 | Francis M. Bacon Jr. | 41.54 | 37.77 |
| | 32 | 334 | Paulin P. Bacon | 41.07 | 37.35 |
| | 31 | 335 | " " " | 70.45 | 64.06 |
| | 30 | 336 | Eliz. V. N. Marrin | 41.62 | 37.85 |
| | 29 | 337 | Emma F. H. Wyckoff | 35.50 | 32.28 |
| | 894 63 | 338 | French Ch du St Eslirit | 51.35 | 46.70 |
| | 64 | 339 | " " " " " | 47.48 | 43.18 |
| | 65 | 340 | Robt. W. Johnson | 44.68 | 40.63 |
| | 66 | 341 | Jno. McMahon | 42.43 | 38.58 |
| | 22 | 342 | Thos. Snell | 33.28 | 30.26 |
| | 23 | 343 | Irene S. Boesch | 30.90 | 28.10 |
| | 24 | 344 | Florence R. Woolton | 28.53 | 25.94 |
| | 25 | 345 | Walter F. Martin | 20.60 | 18.73 |
| | 26 | 346 | Jno. Kelley Est. | 19.94 | 18.13 |
| | 27 | 347 | Annie A. Clarkson Est. | 12.04 | 10.95 |
| | 61 | 348 | Helene Smidt | 101.71 | 92.49 |
| 132 | 60 | 349 | Frank N. Dowling | 46.23 | 42.04 |
| | 59 | 350 | 140 E. 39th St. Corp. | 58.68 | 53.36 |
| | 57 | 351 | Mary C. Thompson | 58.68 | 53.36 |
| | 56 | 352 | Sarah S. Hewett | 58.68 | 53.36 |
| | 55 | 353 | Gothland Rlty. Corp. | 49.33 | 44.86 |
| | 54 | 354 | Fannie J. Maxwell | 59.05 | 53.70 |
| | 53 | 355 | Saul S. Warrin | 58.68 | 53.36 |
| | 52 | 356 | Marshall S. " | 58.68 | 53.36 |
| | 49 | 357 | Jas. Rozell Est., Inc. | 63.83 | 58.04 |
| | 48 | 358 | Maurice G. C. Goodman | 36.95 | 33.60 |
| | 47 | 359 | Marshall S. Warrin | 60.02 | 54.58 |
| | 46 | 360 | Mary Sysaght Est. | 55.71 | 50.66 |
| | 45 | 361 | Edwin A. Cruikshank Est. | 59.07 | 53.72 |
| | 44 | 362 | Jas. S. Breese | 53.21 | 48.39 |
| | 43 | 363 | Eloise S. B. Norrie Est. | 34.17 | 31.07 |
| | 42 | 364 | Peter D. Koopmann | 26.79 | 24.36 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | 28 | 365 | Kate E. Wilson | 27.87 | 25.34 | |
| | 29 | 366 | Wm. V. Rowe | 27.87 | 25.34 | |
| | 30 | 367 | Julia D. T. Delafield | 27.87 | 25.34 | |
| | 31 | 368 | Cornelius Gallagher | 27.87 | 25.34 | |
| | 32 | 369 | " " | 27.87 | 25.34 | |
| | 33 | 370 | " " | 42.43 | 38.58 | |
| | 34 | 371 | Susan S. Huntington | 22.34 | 20.32 | |
| | 35 | 372 | Helen M. McLaughlin | 22.34 | 20.32 | |
| | 36 | 373 | Courtney Hyde | 22.34 | 20.32 | |
| | 37 | 374 | Edith G. Bowdoin | 36.67 | 33.35 | |
| | 38 | 375 | Elias P. Robinson | 36.67 | 33.35 | |
| | 39 | 376 | Jas. Loeb | 29.34 | 26.68 | |
| | 40 | 377 | Clyde Martin | 23.51 | 21.38 | |
| 1295 | 69 | 381 | 41st St. & Park Ave. Corp. | 646.96 | 588.34 | |
| | 67 | 382 | " " " " " " | 146.71 | 133.41 | 134 |
| | 65 | 383 | Charles & Co. | 293.42 | 266.82 | |
| | 64 | 384 | Richard Croker Jr. | 146.71 | 133.41 | |
| | 63 | 385 | " " " | 146.71 | 133.41 | |
| | 62 | 386 | " " " | 146.71 | 133.41 | |
| | 61 | 387 | Steuben Co. | 146.71 | 133.41 | |
| | 60 | 388 | " " | 111.50 | 101.39 | |
| | 59½ | 389 | Richard Croker Jr. | 111.50 | 101.39 | |
| | 59 | 390 | Janet S. McKay | 89.20 | 81.11 | |
| | 58 | 391 | Jno. W. Smyth | 87.78 | 79.82 | |
| | 57½ | 392 | " " " | 85.79 | 78.01 | |
| | 57 | 393 | Ciara Stowell | 83.80 | 76.20 | |
| | 56½ | 394 | " " | 81.81 | 74.39 | |
| | 56 | 395 | Janet S. McKay | 102.11 | 92.85 | |
| | 1 | 396 | Architects Offices Inc. | 708.32 | 644.12 | |
| | 8 | 397 | Ernest Flagg | 196.14 | 178.36 | |
| | 10 | 398 | Richard Croker Jr. | 77.02 | 70.04 | 135 |
| | 10½ | 399 | Anna D. McCullough | 77.02 | 70.04 | |
| | 11 | 400 | Richard Croker Jr. | 77.02 | 70.04 | |
| | 12 | 401 | Caroline C. Foote | 102.70 | 93.39 | |
| | 13 | 402 | Robt. J. McClenahan | 82.16 | 74.71 | |
| | 14 | 403 | Forbes R. McCreery | 82.16 | 74.71 | |
| | 14½ | 404 | Newbold Le Roy Edgar | 85.09 | 77.38 | |
| | 15 | 405 | Louise G. Glorney | 88.03 | 80.05 | |
| | 16 | 406 | Wm. M. Cruikshank | 90.97 | 82.72 | |
| | 17 1/5 | 407 | Cornelia E. Brown | 26.74 | 24.32 | |
| | 17¼ | 408 | Park E. Bell | 25.35 | 23.05 | |
| | 17½ | 409 | Charles D. Wetmore | 24.38 | 22.17 | |
| | 17¼ | 410 | Wm. R. Seigle | 23.66 | 21.52 | |
| | 17 | 411 | Woodbury G. Langdon Co. | 23.77 | 21.62 | |
| 895 | 1 | 412 | Geo. C. Boldt | 44.60 | 40.56 | |
| | 2 | 413 | May M. Govin | 48.12 | 43.76 | |

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| | | | | | |
|---|---|---|---|---|---|
| | 3 | 414 | Agnes Roche | 51.64 | 46.96 |
| | 4 | 415 | Anna M. Fraser Est. | 55.16 | 50.16 |
| | 5 | 416 | " " " " | 58.68 | 53.36 |
| | 94 | 417 | Schwarzler Rlty. Co. | 100.18 | 91.10 |
| | 93 | 418 | Mary S. P. Hogan | 57.76 | 52.52 |
| | 92 | 419 | Julia F. Valentine | 59.91 | 54.48 |
| | 90 | 420 | Henry St. Settlement | 135.49 | 123.21 |
| | 89 | 421 | Robt. Graves | 76.90 | 69.98 |
| | 85 | 422 | Park Ave. Operating Co. | 390.25 | 354.88 |
| | 84 | 423 | Mary S. Webster | 82.16 | 74.71 |
| | 83 | 424 | Walter E. Maynard | 82.16 | 74.71 |
| | 82 | 425 | " " " | 82.16 | 74.71 |
| | 81 | 426 | Wm. Rand | 82.16 | 74.71 |
| | 80 | 427 | Moritz A. Jagendorf | 82.16 | 74.71 |
| 137 | 79 | 428 | Gothland Rlty. Corp. | 82.16 | 74.71 |
| | 7 | 429 | Hoggson Bros. Corp. | 149.65 | 136.09 |
| | 76 | 430 | Annie C. Taber | 69.83 | 63.50 |
| | 75 | 431 | Jennie T. Ashley | 67.35 | 61.25 |
| | 74 | 432 | Frances B. Henry | 64.10 | 58.29 |
| | 23 | 433 | Albert G. Duysters | 52.15 | 47.42 |
| | 22 | 434 | Frank N. Dowling | 54.47 | 49.53 |
| | 21 | 435 | Louise F. Wickshan | 50.99 | 46.37 |
| | 20 | 436 | Isabel W. Richardson | 47.51 | 43.20 |
| | 19 | 437 | Harriet B. Green | 45.68 | 41.54 |
| | 6 | 438 | Emily Van Volkenburgh | 39.12 | 35.57 |
| | 7 | 439 | Charles E. Bedford | 39.12 | 35.57 |
| | 8 | 440 | Eliz. S. Smyth | 39.12 | 35.57 |
| | 9 | 441 | Fitz-Henry F. Tucker | 58.68 | 53.36 |
| | 10 | 442 | Princess Elizabeth Swoff | 58.68 | 53.36 |
| | 11 | 443 | Frank A. Otis | 39.12 | 35.57 |
| 138 | 12 | 444 | Frank A. Dowling | 39.12 | 35.57 |
| | 13 | 445 | Ellen J. Evans | 39.12 | 35.57 |
| | 14 | 446 | Marion Friedel | 39.90 | 36.28 |
| | 15 | 447 | Belle Silvera | 46.95 | 42.69 |
| | 16 | 448 | Mildred A. Page | 46.95 | 42.69 |
| | 17 | 449 | Ellen J. Curran | 46.95 | 42.69 |
| | 18 | 449a | Agena W. Dennett | 46.95 | 42.69 |
| 894 | 1 | 450 | 67 Park Ave. Corp. | 98.67 | 89.73 |
| | 4 | 451 | Joseph E. Stevens | 49.21 | 44.75 |
| | 5 | 452 | " " " | 34.85 | 31.69 |
| | 89 | 453 | Walter P. Bliss | 50.12 | 45.58 |
| | 88 | 454 | Alice T. Wheelock Est. | 32.99 | 30.00 |
| | 87 | 455 | " " " " | 30.36 | 27.61 |
| | 86 | 456 | Wm. R. Brown | 54.59 | 49.64 |
| | 84 | 457 | Alice T. Weelcock' Est. | 45.66 | 41.52 |
| | 83 | 458 | Georgia S. Whitman | 49.52 | 45.03 |

| | | | | |
|---|---|---|---|---|
| 82 | 459 | Bertha F. Thurber | 39.90 | 36.28 |
| 81 | 460 | Emieline H. Olin | 46.95 | 42.69 |
| 80 | 461 | Anna M. Bogert | 46.95 | 42.69 |
| 79 | 462 | Mary D. O'Mara | 46.95 | 42.69 |
| 78 | 463 | Edith Van B. McCullough | 46.95 | 42.69 |
| 77 | 464 | Kate de V. Schwab | 46.95 | 42.69 |
| 76 | 465 | David Mahoney Est. | 46.95 | 42.69 |
| 75 | 466 | Emiley A. Hurry | 46.95 | 42.69 |
| 74 | 467 | Edw. Patterson Est. | 46.95 | 42.69 |
| 73 | 468 | Mihran B. Parohnagian | 46.95 | 42.69 |
| 72 | 469 | Isabel T. Mackie | 47.53 | 43.22 |
| 71 | 470 | Thos. Snell | 40.12 | 36.48 |
| 70 | 471 | " " | 37.12 | 33.76 |
| 69 | 472 | " " | 34.95 | 31.78 |
| 68 | 473 | " " | 32.76 | 29.79 140 |
| 67 | 474 | " " | 31.20 | 28.37 |
| 21 | 475 | Simon Baldwin Est. | 28.89 | 26.27 |
| 20 | 476 | Caroline M. Sewell | 25.40 | 23.10 |
| 19 | 477 | Sydia C. Ketcham | 23.29 | 21.18 |
| 18 | 478 | Henry E. Meeker | 21.17 | 19.25 |
| 17 | 479 | Chas. S. Butler | 24.52 | 22.30 |
| 6 | 480 | Peter C. Baker | 29.35 | 26.69 |
| 7 | 481 | S. Sidney Smith | 29.35 | 26.69 |
| 8 | 482 | Yale Kneeland | 36.67 | 33.35 |
| 9 | 483 | Casimir de R. Moore | 36.67 | 33.35 |
| 10 | 484 | Beverly R. Robinson | 29.35 | 26.69 |
| 11 | 485 | Thompkins McIlvaine | 29.35 | 26.69 |
| 12 | 486 | Chas. Ewing | 24.93 | 22.67 |
| 13 | 487 | Estelle Sheffield | 24.93 | 22.67 |
| 14 | 488 | Eliz. D. Gallatin | 24.93 | 22.67 |
| 15 | 489 | Angelica Putnam | 24.93 | 22.67 141 |
| 16 | 490 | Belia Da Costa Greene | 24.93 | 22.67 |
| 76 20 | 491 | Athens Hotel Co. | 176.43 | 160.44 |
| 21 | 492 | Joanna C. Riker | 207.25 | 188.46 |
| 22 | 493 | 301 Mad. Ave. Corp. | 178.28 | 162.12 |
| 23 | 494 | Fannie I. Helmeth Est. | 185.71 | 168.88 |
| 24 | 495 | H. A. Sherman Est. | 62.58 | 56.91 |
| 75 50 | 498 | Mary C. Thompson | 130.02 | 118.23 |
| 51 | 499 | 40 E. 41st St. Co. | 130.02 | 118.23 |
| 52 | 500 | Mary C. Thompson | 118.21 | 107.50 |
| 20 | 501 | " " " | 263.21 | 239.35 |
| 21 | 502 | " " " | 203.57 | 185.12 |
| 23 | 503 | " " " | 172.90 | 157.23 |
| 48 | 504 | 40 E. 41st St. Co. | 352.45 | 320.50 |
| 46 | 505 | Chemist Club | 234.74 | 213.46 |
| 44 | 506 | Chemist Bldg. Co. | 332.14 | 302.03 |

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| | | | | | |
|---|---|---|---|---|---|
| | 43½ | 507 | Jas. Welbor | 97.41 | 88.58 |
| | 43 | 508 | Benj. L. M. Bates | 97.41 | 88.58 |
| | 27 | 509 | " " " " | 1.825.10 | 1.659.67 |
| | 24 | 510 | Mary C. Thompson | 102.70 | 93.39 |
| | 25 | 511 | " " " | 102.70 | 93.39 |
| | 26 | 512 | " " " | 102.70 | 93.39 |
| 869 | 54 | 513 | Horace Porter Est. | 110.32 | 100.32 |
| | 55 | 514 | #709-11 5th Ave. Co. | 109.96 | 99.99 |
| | 56 | 515 | Philip H. Rosenbach | 102.63 | 93.33 |
| | 20 | 516 | Ret. Realty Corp. | 150.65 | 136.99 |
| | 21 | 517 | " " " | 101.27 | 92.09 |
| | 22 | 518 | Charlotte B. Sorchan | 68.64 | 62.42 |
| | 24 | 519 | Moses T. Pyne Est. | 104.00 | 94.57 |
| | 53 | 520 | Moss Llosveren | 102.70 | 93.39 |
| 143 | 52 | 521 | Geo. M. Perkins | 102.70 | 93.39 |
| | 51 | 522 | Jos. Milbank | 102.70 | 93.39 |
| | 49 | 524 | Hoggson Bros. | 102.70 | 93.39 |
| | 50 | 523 | Moses T. Pyne | 102.70 | 93.39 |
| | 48 | 525 | Jno. F. Alvoro | 102.70 | 93.39 |
| | 47 | 526 | " " | 102.70 | 93.39 |
| | 46 | 527 | Investment Securities Corp. | 102.70 | 93.39 |
| | 45 | 528 | Emery L. Ferris | 102.70 | 93.39 |
| | 25 | 529 | Maud C. Nicoll | 58.68 | 53.36 |
| | 26 | 530 | Mary E. Seeley | 58.68 | 53.36 |
| | 27 | 531 | Ella D. Milbank | 58.68 | 53.36 |
| | 28 | 532 | Jos. " | 58.68 | 53.36 |
| | 29 | 533 | Kath. S. Davenport | 58.68 | 53.36 |
| | 30 | 534 | Chas. L. Riker | 58.68 | 53.36 |
| | 31 | 535 | Jos. F. Stillman | 58.68 | 53.36 |
| | 32 | 536 | Austin G. Fox | 58.68 | 53.36 |
| 144 | " | 537 | Princeton Club of N. Y. | 58.68 | 53.36 |
| | 44 | 538 | Alex. Wilson Rlty. Co. | 58.83 | 53.50 |
| | 43 | 539 | Emery L. Ferris | 58.83 | 53.50 |
| | 42 | 540 | Marcel J. Rougeron | 58.83 | 53.50 |
| | 40 | 541 | Cleveland E. Dodge | 103.42 | 94.05 |
| | 38 | 542 | Grace Dodge | 111.25 | 101.17 |
| | 36 | 543 | Princeton Club of N. Y. | 116.29 | 105.75 |
| | 34 | 544 | " " " " " | 91.41 | 83.12 |
| 868 | 54 | 545 | Jas. Speyer | 81.45 | 74.07 |
| | 55 | 546 | " " | 76.88 | 69.91 |
| | 56 | 547 | " " | 69.20 | 62.93 |
| | 20 | 548 | Louise H. Tiffany | 63.61 | 57.84 |
| | 22 | 549 | Savage Rlty. Co. | 71.31 | 64.85 |
| | 23 | 550 | Mary C. Wallace Est. | 23.77 | 21.62 |
| | 24 | 551 | Mary C. Wallace Est. | 23.77 | 21.62 |
| | 25 | 552 | Francis B. Wallace Est. | 29.71 | 27.02 |

*Final Decree (Abstract of Benefit)*

| | | | | | |
|---|---|---|---|---|---|
| | 52 | 553 | Fanny A. Haven Est. | 68.07 | 61.90 |
| | 51 | 554 | " " " " | 46.95 | 42.69 |
| | 50 | 555 | Mary E. Nevins | 58.68 | 53.36 |
| | 49e | 556 | Silas Wodell | 46.95 | 42.69 |
| | 48 | 557 | Eliz. S. Proctor | 48.85 | 44.42 |
| | 47 | 558 | Gherardi Davis | 48.85 | 44.42 |
| | 46 | 559 | Wm. Skinner | 65.71 | 59.75 |
| | 45 | 560 | Mary Y. Dickson | 63.37 | 57.63 |
| | 42 | 561 | Arthur C. James | 143.74 | 130.71 |
| | 41 | 562 | Emily O. Butler | 44.57 | 40.53 |
| | 40 | 563 | John E. Berwind | 55.71 | 50.66 |
| | 39 | 564 | Francis O. Jones | 35.17 | 31.98 |
| | 38 | 565 | 72 Park Ave. Corp. | 35.17 | 31.98 |
| | 37 | 566 | Wm. F. Morgan | 29.12 | 26.48 |
| | 36 | 567 | Clara Sielcken | 29.60 | 26.92 |
| | 26 | 568 | St. Bartholomew's Church | 32.28 | 29.35 |
| | 27 | 569 | Chas. Duggin Est. | 30.81 | 28.02 |
| | 28 | 570 | Amos R. E. Pinchot | 23.47 | 21.34 |
| | 29 | 571 | Chas. M. DaCosta Est. | 23.47 | 21.34 |
| | 30 | 572 | Julia E. Cameron | 41.08 | 37.36 |
| | 31 | 573 | Geo. S. Franklin | 32.28 | 29.35 |
| | 32 | 574 | Cornelia A. Beekman Est. | 36.67 | 33.35 |
| | 33 | 575 | Jas. Loeb & Kuhn Loeb & Co. | 36.67 | 33.35 |
| | 34 | 576 | Ferdinand T. Hopkins | 36.67 | 33.35 |
| | 35 | 577 | Sarah E. Cook | 36.67 | 33.35 |
| 1276 | 8 | 579 | 9 E. 41st St. Co. | 129.11 | 117.41 |
| | 9 | 580 | " " " " " | 129.11 | 117.41 |
| | 10 | 581 | Manhattan Navy Club | 258.22 | 234.81 |
| | 12 | 582 | Clarence S. Wadsworth | 129.11 | 117.41 |
| | 17 | 584 | Mary E. Jackson | 121.83 | 110.79 |
| | 16½ | 585 | Jos. H. Mahan | 121.83 | 110.79 |
| | 16 | 586 | Mary A. Jordan | 121.83 | 110.79 |
| | 14 | 587 | 300 Madison Ave. | 271.40 | 246.80 |
| | 14½ | 588 | 42nd St. & Madison Ave. Co. | 76.27 | 69.36 |
| 1275 | 69 | 589 | Farmers L. & Tr. Co. | 125.39 | 114.02 |
| | 70 | 590 | Fieldston Rlty. Corp. | 212.20 | 192.97 |
| | 71 | 591 | Natl. Ass'n Bldg. Corp. | 151.99 | 138.21 |
| | 72 | 592 | " " " " | 154.33 | 140.34 |
| | 68 | 593 | " " " " | 129.17 | 117.46 |
| | 67 | 594 | " " " " | 128.46 | 116.82 |
| | 66 | 595 | Jos. McGarrity | 127.73 | 116.15 |
| | 65½ | 596 | Thos. B. Clarke | 127.03 | 115.52 |
| | 65 | 597 | " " " | 126.32 | 114.87 |
| | 64 | 598 | " " " | 122.07 | 111.01 |
| | 63 | 599 | American Encaustic Filing Co. | 146.71 | 133.41 |
| | 61 | 600 | 18 E. 41st St., Inc. | 293.80 | 267.17 |

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| | | | | | |
|---|---|---|---|---|---|
| | 60 | 601 | Maud A. Kiskadden | 147.11 | 133.78 |
| | 59½ | 602 | Manville Securities Co. | 91.28 | 83.01 |
| | 59 | 603 | " " " | 202.65 | 184.28 |
| | 57 | 604 | " " " | 137.76 | 125.27 |
| | 56 | 605 | Elsie S. Rockefeller | 136.35 | 123.99 |
| | 17 | 606 | Hy. W. Cannon | 127.03 | 115.53 |
| | 16 | 607 | " " " | 127.03 | 115.52 |
| | 14 | 608 | 21 E. 40th St., Inc. | 225.11 | 204.71 |
| | 1 | 609 | Geo. L. Slawson | 555.12 | 504.80 |
| | 6 | 610 | Jas. S. Inglis Est. | 107.18 | 97.46 |
| | 7 | 611 | Egyptian Lacquer Mfg. Co. | 98.17 | 89.27 |
| | 8 | 612 | Thos. B. Clarke | 98.95 | 89.98 |
| | 9 | 613 | Metropolitan Credit Corp. | 205.40 | 186.78 |
| | 11 | 614 | Emily J. Adams | 102.70 | 93.39 |
| 149 | 12 | 615 | Stafford Bros., Inc. | 212.90 | 193.60 |
| 869 | 74 | 616 | Fredk. W. Vanderbilt | 832.40 | 756.95 |
| | 68 | 617 | Wm. H. Penfold Est. | 108.86 | 98.99 |
| | 67 | 618 | Costikyan & Co. | 108.86 | 98.99 |
| | 66 | 619 | Country & City Corp. | 86.26 | 78.44 |
| | 64 | 620 | Michl. Friedsman | 209.50 | 190.51 |
| | 61 | 621 | Julius Tishman | 286.06 | 260.13 |
| | 59 | 622 | Eliz. Billings | 99.84 | 90.79 |
| | 58 | 623 | " " | 114.36 | 103.99 |
| | 19 | 624 | Geo. M. Miller | 105.56 | 95.99 |
| | 18 | 625 | " " " | 96.76 | 87.99 |
| | 17 | 626 | " " " | 58.65 | 53.33 |
| | 16 | 627 | Marian H. Wickes | 80.86 | 73.51 |
| | 1 | 628 | Jno. M. Bixby | 393.68 | 358.00 |
| | 9 | 630 | Wm. H. Penfold | 58.68 | 53.36 |
| | 10 | 631 | Bklyn Impt. Co. | 117.37 | 106.71 |
| | 12 | 632 | Michl. Friedsman | 56.34 | 51.23 |
| | 13 | 633 | Geo. M. Miller | 56.34 | 51.23 |
| | 14 | 633a | " " " | 29.36 | 26.70 |
| 868 | 5 | 634 | Walter E. Maynard | 38.87 | 35.35 |
| | 75 | 634a | Theron R. Butler | 68.53 | 62.32 |
| | 4 | 635 | Edwin Bergh Est. | 28.53 | 25.94 |
| | 1 | 636 | Hoffman Bros. Rlty. Co. | 125.81 | 114.41 |
| | 70 | 637 | David Keppel | 58.68 | 53.36 |
| | 8 | 638 | McDanten Rlty. Corp. | 143.04 | 130.07 |
| | 10 | 639 | Naols Corporation | 143.04 | 130.07 |
| | 65 | 640 | Jennie M. Thompson Est. | 58.68 | 53.36 |
| | 64 | 641 | Jno. W. Cox | 58.68 | 53.36 |
| | 63 | 642 | George F. Baker | 52.82 | 48.03 |
| | 62 | 643 | " " " | 52.82 | 48.03 |
| | 60 | 644 | Florence B. Loew | 120.34 | 109.43 |
| | 59 | 645 | George F. Baker, Jr. | 60.17 | 54.72 |

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|---|---|---|---|---|---|
| 19 | 646 | Florence T. Baker | 102.49 | 93.20 | |
| 16 | 647 | Geo. F. Baker | 117.95 | 107.26 | |
| 7 | 648 | Edith C. B. Cram | 36.67 | 33.35 | |
| 74 | 649 | Alex. Masterson | 68.53 | 62.32 | |
| 72 | 650 | Harley D. Hutchins | 165.13 | 150.16 | |
| 12 | 651 | John W. Cox | 34.84 | 31.68 | |
| 13 | 652 | " " " | 34.84 | 31.68 | |
| 14 | 653 | George F. Baker, Jr. | 34.84 | 31.68 | |
| 15 | 654 | " " " " | 34.84 | 31.68 | |
| 867 70 | 655 | 415 5th Ave. Co. | 221.18 | 201.13 | |
| 4 | 656 | " " " " | 166.73 | 151.62 | |
| 64 | 657 | Chas. Scribner | 65.22 | 59.31 | |
| 63 | 658 | Bonwit Te[illegible] & Co. | 32.60 | 29.64 | |
| 62 | 659 | " " " " | 32.60 | 29.64 | |
| 61 | 660 | 240 Madison, Inc. | 32.60 | 29.64 | 152 |
| 57 | 661 | Anahma Realty Corp. | 123.89 | 112.66 | |
| 1 | 662 | M[illegible] L. Impt. Corp. | 122.29 | 111.21 | |
| 9 | 663 | [illegible]rt J. Milbank | 69.77 | 63.45 | |
| 12 | 664 | [illegible] Bliss Est. | 32.64 | 29.68 | |
| 13 | 665 | Helen H. Jenkins | 31.30 | 28.48 | |
| 14 | 666 | " " " | 33.91 | 30.84 | |
| 18 | 667 | 240 Madison Ave., Inc. | 48.68 | 44.43 | |
| 16 | 668 | 238 Madison Ave. Rlty. Corp. | 44.57 | 40.53 | |
| 15 | 669 | Helen H. Jenkins | 26.41 | 24.02 | |
| 866 1 | 670 | Realty Mangers Corp. | 131.90 | 119.94 | |
| 3 | 671 | Tiffany & Co. | 61.57 | 55.99 | |
| 76 | 672 | " " " | 225.14 | 204.73 | |
| 71 | 673 | Ella L. Kramer | 65.22 | 59.31 | |
| 68 | 675 | Louis Van Renssellaer | 33.91 | 30.84 | |
| 67 | 676 | Chas. E. Haviland | 32.60 | 29.64 | |
| 66 | 677 | Wm. N. Crane | 32.60 | 29.64 | 153 |
| 65 | 678 | Emery L. Ferris | 30.00 | 27.28 | |
| 9 | 679 | Susan A. Robbins | 40.43 | 36.77 | |
| 11 | 680 | Chas. E. Haviland | 96.51 | 87.76 | |
| 13 | 681 | " " " | 32.60 | 29.64 | |
| 14 | 682 | " " " | 32.60 | 29.64 | |
| 15 | 683 | Thos. B. Moran | 32.60 | 29.64 | |
| 16 | 684 | Jan E. Oothont | 47.06 | 42.79 | |
| 18 | 685 | Vacation Ass'n, Inc. | 35.55 | 32.33 | |
| 19 | 686 | Grace Humiston | 31.36 | 28.52 | |
| 20 | 687 | Chas. A. Peabody | 31.36 | 28.52 | |
| 62 | 688 | Gertie E. Gorman | 33.88 | 30.81 | |
| 63 | 689 | Witherbee Real Est. & Imp. Co. | 33.88 | 30.81 | |
| 64 | 690 | 230 Madison Ave., Inc. | 34.70 | 31.55 | |

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| | | | | | |
|---|---|---|---|---|---|
| 865 | 1 | 691 | Richard S. Ely Est. | 33.35 | 30.33 |
| | 2 | 692 | Eliz. A. Titus Est. | 32.36 | 29.43 |
| | 3 | 693 | Childs Co. Corp. | 32.36 | 29.43 |
| | 4 | 694 | Marie T. Hadden | 32.36 | 29.43 |
| | 74 | 695 | Adrian Iselin | 40.46 | 36.79 |
| | 73 | 696 | Haliburton Fales | 40.46 | 36.79 |
| | 72 | 697 | Geo. Bliss Est. | 40.46 | 36.79 |
| | 71 | 698 | " " " | 41.68 | 37.90 |
| | 69 | 699 | Emma K. S. Flint | 32.60 | 29.64 |
| | 68 | 700 | Frank G. Shattuck Co. | 32.60 | 29.64 |
| | 67 | 701 | Jno. Pierpont Morgan Est. | 32.60 | 29.64 |
| | 66 | 702 | Wm. M. Astor | 32.60 | 29.64 |
| | 65 | 703 | " " " | 32.60 | 29.64 |
| | 64 | 704 | " " " | 32.60 | 29.64 |
| 155 | 63 | 705 | " " " | 32.60 | 29.64 |
| | 62 | 706 | " " " | 32.60 | 29.64 |
| | 5 | 707 | Roxton Realty Co. | 32.60 | 29.64 |
| | 6 | 708 | B. Altman & Co. | 32.60 | 29.64 |
| | 7 | 709 | Edith T. Martin | 32.60 | 29.64 |
| | 8 | 710 | Wm. W. Astor | 32.60 | 29.64 |
| | 9 | 711 | " " " | 32.60 | 29.64 |
| | 10 | 712 | " " " | 32.60 | 29.64 |
| | 11 | 713 | " " " | 32.60 | 29.64 |
| | 12 | 714 | " " " | 32.60 | 29.64 |
| | 13 | 715 | " " " | 32.60 | 29.64 |
| | 14 | 716 | " " " | 31.05 | 28.24 |
| | 15 | 717 | " " " | 30.95 | 28.14 |
| | 16 | 718 | " " " | 30.95 | 28.14 |
| | 17 | 719 | " " " | 30.95 | 28.14 |
| | 58 | 720 | " " " | 30.95 | 28.14 |
| 156 | 59 | 721 | " " " | 30.95 | 28.14 |
| | 60 | 722 | " " " | 30.95 | 28.14 |
| | 61 | 723 | " " " | 31.05 | 28.24 |
| 864 | 1 | 724 | Jno. N. A. Griswold | 1,030.24 | 936.86 |
| | 12 | 725 | Arthur A. Carey | 65.22 | 59.31 |
| 867 | 55 | 726 | Wm. R. Jones | 163.01 | 148.23 |
| | 51 | 727 | Mary R. Sheldon | 32.60 | 29.64 |
| | 50 | 728 | Georgette H. Blandy | 24.46 | 22.24 |
| | 49 | 729 | Kath. W. Kean | 24.46 | 22.24 |
| | 48 | 730 | " " " | 24.46 | 22.24 |
| | 47 | 731 | Edw. W. Humphreys | 24.46 | 22.24 |
| | 46 | 732 | Gilbert T. Rafferty | 32.60 | 29.64 |
| | 45 | 733 | Middleton S. Burrell | 32.60 | 29.64 |
| | 44 | 734 | Hy. Rogers Est. | 32.60 | 29.64 |
| | 43 | 735 | Flintlock Rlty. Co. | 32.60 | 29.64 |
| | 20 | 736 | Saul Riker | 33.02 | 30.03 |
| | 21 | 737 | J. Alien Townsend *et al.* | 32.69 | 29.73 |

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|---|---|---|---|---|---|
| 23 | 738 | Jos. R. De Lamar Est. | 64.71 | 58.84 | |
| 24 | 739 | Chas. H. Ditson | 32.60 | 29.64 | |
| 25 | 740 | Emily N. Trevor | 32.60 | 29.64 | |
| 26 | 741 | Horace Gray Est. | 32.60 | 29.64 | |
| 27 | 742 | Kate W. Winthrop | 32.60 | 29.64 | |
| 28 | 743 | " " " | 32.60 | 29.64 | |
| 29 | 744 | Cornelius Bliss Est. | 32.60 | 29.64 | |
| 30 | 745 | Isaac How | 32.60 | 29.64 | |
| 31 | 746 | Cortlandt F. Bishop | 32.60 | 29.64 | |
| 32 | 747 | Chas. F. Roe | 32.60 | 29.64 | |
| 33 | 748 | Chas. H. Coster Est. | 44.16 | 40.16 | |
| 35 | 749 | Bertha H. Potter Est. | 16.98 | 15.44 | |
| 36 | 750 | Mary B. Potter Est. | 16.98 | 15.44 | |
| 37 | 751 | Jas. F. Fargo | 27.47 | 24.98 | |
| 38 | 752 | Grace R. Rogers | 25.80 | 23.46 | 158 |
| 39 | 753 | Louisine P. Weekes | 17.96 | 16.33 | |
| 40 | 754 | Sam'l A. French | 17.96 | 16.33 | |
| 41 | 755 | Augustine Stone Est. | 17.96 | 16.33 | |
| 42 | 756 | Gould Rlty. Co. | 23.38 | 21.26 | |
| 866 58 | 757 | Jno. P. Morgan Est. | 136.49 | 124.12 | |
| 25 | 758 | " " " " | 435.37 | 395.91 | |
| 33 | 758a | Louise P. Saterlee | 37.16 | 33.79 | |
| 51 | 759 | Sarah E. Lanier Est. | 43.04 | 39.14 | |
| 50 | 760 | " " " " | 65.22 | 59.31 | |
| 48 | 761 | Clarence L. Hay | 32.60 | 29.64 | |
| 47 | 762 | Frederick C. Havemeyer | 32.60 | 29.64 | |
| 46 | 763 | Kate W. Winthrop | 41.03 | 37.31 | |
| 42 | 764 | " " " | 49.87 | 45.35 | |
| 40 | 765 | Annie B. Jennings | 40.83 | 37.13 | |
| 39 | 766 | Edw. W. Sheldon | 33.28 | 30.26 | |
| 38 | 767 | Eliz. T. Nicholas | 33.28 | 30.26 | 159 |
| 37 | 768 | Thos. Scott Est. | 33.28 | 30.26 | |
| 35 | 769 | Jennie W. Delano | 42.30 | 38.47 | |
| 365 19 | 770 | Ch. of Holy Incarnation | 165.91 | 150.87 | |
| 18 | 771 | " " " " | 29.69 | 27.00 | |
| 57 | 772 | Flintlock Rlty. Co. | 42.59 | 38.73 | |
| 55 | 773 | " " " | 42.02 | 38.21 | |
| 53 | 774 | Marguerite O'Brien | 58.02 | 52.76 | |
| 50 | 775 | Mary A. Hoyt | 24.53 | 22.31 | |
| 49 | 776 | Gerald L. Hoyt | 48.25 | 43.88 | |
| 47 | 777 | Julius S. Morgan, Jr. | 39.13 | 35.58 | |
| 45 | 778 | Juliet P. Hamilton | 32.60 | 29.64 | |
| 44 | 779 | City Real Estate Co. | 39.13 | 35.58 | |
| 42 | 780 | Maud H. Pyne | 32.60 | 29.64 | |
| 41 | 781 | Wm. C. Osborn | 32.60 | 29.64 | |
| 32 | 782 | Women's City Club of N. Y., Inc. | 43.58 | 39.63 | |

| | | | | | |
|---|---|---|---|---|---|
| | 24 | 782a | Almira H. Torrey | 32.60 | 29 |
| | 34 | 783 | Ella F. Guthrie | 39.62 | 36 |
| | 25 | 783a | Julius Morgan | 32.60 | 29 |
| | 35 | 784 | Anna V. N. Gamble | 42.26 | 38 |
| | 26 | 784a | Jno. Pierpont Morgan Est. | 36.08 | 23 |
| | 36 | 784b | Unknown | 4.95 | 4 |
| | 37 | 785 | Harry H. Flagler | 63.44 | 57 |
| | 27 | 785a | City Real Estate Co. | 39.13 | 35 |
| | 39 | 786 | Wm. Church Osborn | 34.68 | 31 |
| | 29 | 786a | Mary G. Howland | 33.91 | 30 |
| | 40 | 787 | Wm. E. Osborn | 38.83 | 35 |
| 864 | 30 | 787a | May A. Kinnicutt | 37.82 | 34 |
| | 25 | 788 | Glengarry Rlty Co. | 65.27 | 59 |
| | 23 | 789 | B. Altman & Co. | 65.15 | 59 |
| 161 | 58 | 790 | " " " " | 32.58 | 29 |
| | 57 | 791 | " " " " | 32.58 | 29 |
| | 55 | 792 | " " " " | 65.27 | 59 |
| | 54 | 793 | " " " " | 27.16 | 24 |
| | 53 | 794 | Thos. B. Clarke | 27.16 | 24 |
| | 52 | 795 | Clarlotte E. Woodbury | 27.16 | 24 |
| | 51 | 796 | 26 E. 35 St. Rlty. Corp. | 27.16 | 24 |
| | 50 | 797 | Jno. O. Sargent Est. | 27.16 | 24 |
| | 49 | 798 | Alice Donnelly | 27.16 | 24 |
| | 48 | 799 | Isabella M. Brown | 32.60 | 29 |
| | 47 | 800 | Caroline B. Knapp | 32.60 | 29 |
| | 46 | 801 | Chas. H. Werner | 32.60 | 29 |
| | 45 | 802 | Geo. F. Butterworth | 20.11 | 18 |
| | 44 | 803 | Annie L. Winters | 20.11 | 18 |
| | 43 | 804 | Asa B. Davis | 20.11 | 18 |
| | 42 | 805 | Virgil P. Gibney | 20.11 | 18 |
| 162 | 41 | 806 | " " " | 20.11 | 18 |
| | 26 | 807 | B. Altman & Co. | 32.60 | 29 |
| | 27 | 808 | Harriett N. Pond | 32.60 | 29 |
| | 28 | 809 | Wm. C. Lusk | 32.60 | 29 |
| | 29 | 810 | Wilbur A. Bloodgood | 32.60 | 29 |
| | 30 | 811 | Eliz. G. Watson | 32.60 | 29 |
| | 31 | 812 | Julia M. Mooney Est. | 32.60 | 29 |
| | 32 | 813 | Sarah B. Conkling | 32.60 | 29 |
| | 33 | 814 | Jas. A. Trowbridge | 32.60 | 29 |
| | 34 | 815 | Arthur L. Trowbridge | 31.36 | 28 |
| | 35 | 816 | Unitarian Church of Messiah | 141.97 | 129 |
| 893 | 1 | 817 | Augusta B. Reese | 26.41 | 24 |
| | 2 | 818 | Rapid Transit Subway Cons. Co. | 22.19 | 20 |
| | 3 | 819 | " " " " " | 28.88 | 26 |
| | 5 | 820 | Adelaide L. Douglas | 26.41 | 24 |
| | 9 | 821 | Fredk. W. Devoe Est. | 26.41 | 24 |

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|---|---|---|---|---|
| 91 | 822 | Geo. A. Plimpton | 25.97 | 23.62 |
| 90 | 823 | Collis P. Huntington Est. | 52.38 | 47.63 |
| 88 | 824 | Minnie T. Knowlton | 26.08 | 23.72 |
| 87 | 825 | Kath. S. Kilborne | 26.08 | 23.72 |
| 86 | 826 | Dolly P. Nagel | 26.08 | 23.72 |
| 85 | 827 | Wm. H. L. Edwards | 26.08 | 23.72 |
| 84 | 828 | Warran S. Adams | 26.08 | 23.72 |
| 83 | 829 | Alice E. Nicholas | 20.22 | 18.39 |
| 82 | 830 | Nathan T. Pulsifer | 18.27 | 16.61 |
| 81 | 831 | Chester H. Aldrich | 18.27 | 16.61 |
| 80 | 832 | Annie E. Erickson | 18.27 | 16.61 |
| 79 | 833 | Ralph Holden | 18.27 | 16.61 |
| 78 | 834 | Chas. Isham | 18.27 | 16.61 |
| 77 | 835 | Henry G. Bugbee | 15.65 | 14.23 |
| 76 | 836 | Arabella D. Huntington | 35.85 | 32.60 |
| 6 | 837 | Augusta B. Reese | 32.60 | 29.64 |
| 7 | 838 | Josephine B. Slade | 27.39 | 24.91 |
| 8 | 839 | Jas. A. Renwick | 27.39 | 24.91 |
| 9 | 840 | Ellen Kent Est. | 27.39 | 24.91 |
| 10 | 841 | Geo. W. Nash Est. | 27.39 | 24.91 |
| 11 | 842 | Helen E. Kremer | 26.08 | 23.72 |
| 12 | 843 | Jessie T. Philips | 27.39 | 24.91 |
| 13 | 844 | Adeline M. E. Peters | 32.60 | 29.64 |
| 14 | 845 | " " " " | 32.60 | 29.64 |
| 15 | 846 | Francis R. Irving Est. | 32.60 | 29.64 |
| 16 | 847 | Robert Hoe | 21.13 | 19.21 |
| 75 | 848 | Richard D. Barclalow Est. | 6.53 | 5.94 |
| 74 | 849 | Ida M. Adams | 6.53 | 5.94 |
| 73 | 850 | Frederick N. Watriss | 6.53 | 5.94 |
| 72 | 851 | Jno. H. Henshaw | 6.53 | 5.94 |
| 71 | 852 | " " " | 6.53 | 5.94 |
| 70 | 853 | Phelps Stokes Est. | 32.58 | 29.63 |
| 69 | 854 | Wm. H. Lefferts Est. | 32.58 | 29.63 |
| 68 | 855 | Helen Herbeck | 32.58 | 29.63 |
| 21 | 856 | Lillie M. Triest | 24.76 | 22.52 |
| 20 | 857 | Marshall L. Warrin | 21.13 | 19.21 |
| 19 | 858 | Sarah E. Williams | 21.13 | 19.21 |
| 18 | 859 | Jno. J. Riker | 21.13 | 19.21 |
| 17 | 860 | Fredk. W. Hunter Est. | 21.13 | 19.21 |
| 2 1 | 861 | Geo. S. Bowdoin Est. | 67.60 | 61.47 |
| 3 | 862 | Ernest R. Shaw | 34.67 | 31.53 |
| 4 | 863 | Samuel L. Fuller | 34.67 | 31.53 |
| 85 | 864 | 47 Park Ave., Inc. | 136.93 | 124.52 |
| 81 | 865 | Temple Bowdoin Est. | 32.60 | 29.64 |
| 80 | 866 | Kath. J. Whipple | 32.60 | 29.64 |
| 79 | 867 | Jane N. Nichols | 32.60 | 29.64 |

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| | | | | | |
|---|---|---|---|---|---|
| | 78 | 868 | Jno. J. Riker | 32.60 | 29.6 |
| | 77 | 869 | " " " | 26.08 | 23.7 |
| | 76 | 870 | Louis D. Johnson | 26.08 | 23.7 |
| | 75 | 871 | Alice H. Borland | 26.08 | 23.7 |
| | 74 | 872 | Roderick Terry, Jr. | 26.08 | 23.7 |
| | 73 | 873 | Wm. C. Fargo | 26.08 | 23.7 |
| | 5 | 874 | Mary N. Hoffman | 32.60 | 29.6 |
| | 6 | 875 | Caroline S. Endicott | 32.60 | 29.6 |
| | 7 | 876 | Eliz. A. Isherwood | 32.60 | 29.6 |
| | 8 | 877 | Frances T. Pennoyer | 31.62 | 28.7 |
| | 9 | 878 | Geo. E. Furnure | 31.62 | 28.7 |
| | 10 | 879 | Ge. Woolsey | 21.74 | 19.7 |
| | 11 | 880 | Herbert C. Pell | 21.74 | 19.7 |
| 167 | 12 | 881 | Helen F. Draper | 21.74 | 19.7 |
| | 13 | 882 | Ernestine Shumann Heink | 18.27 | 16.6 |
| | 14 | 883 | Ethel S. Elliott | 18.27 | 16.6 |
| | 15 | 884 | Eliz. S. Dickinson | 19.71 | 17.9 |
| | 16 | 885 | Linza Blagden | 19.71 | 17.9 |
| | 17 | 886 | Wm. A. Delano | 19.71 | 17.9 |
| | 18 | 887 | Mary Collins | 19.71 | 17.9 |
| | 19 | 888 | Jno. Pierpont Morgan | 19.71 | 17.9 |
| | 20 | 889 | Susan I. Conner | 32.36 | 29.4 |
| | 66 | 890 | Mary H. Maynard | 32.36 | 29.4 |
| | 67 | 891 | Ethan A. Dennison | 27.18 | 24.7 |
| | 72 | 892 | Helen S. Fargo | 21.26 | 19.3 |
| | 71 | 893 | Gertrude Portridge | 12.30 | 11.1 |
| | 70 | 894 | Jas. M. Hitzrot | 12.23 | 11.1 |
| | 69 | 895 | Alex. S. Walker | 12.23 | 11.1 |
| | 68 | 896 | Grace T. Cumnock | 12.40 | 11.2 |
| 168 | 891 1 | 897 | Jas. H. Robb Est. | 52.19 | 47.4 |
| | 3 | 898 | Chet. Rlty. Corp. | 26.07 | 23.7 |
| | 4 | 899 | Ed. F. Whitney | 26.07 | 23.7 |
| | 92 | 900 | Marie H. S. Young | 33.28 | 30.2 |
| | 91 | 901 | Jno. B. Webb | 12.47 | 11.3 |
| | 90 | 902 | Julie E. Wheelock | 12.49 | 11.3 |
| | 89 | 903 | Pauline D. Austin | 12.43 | 11.3 |
| | 88 | 904 | Geo. S. Bowdoin | 12.96 | 11.7 |
| | 87 | 905 | Frankie J. Roe | 17.84 | 16.2 |
| | 86 | 906 | Celia Jacobs | 17.84 | 16.2 |
| | 85 | 907 | Harriet D. Potter | 17.52 | 15.9 |
| | 84 | 908 | Kath. T. Moore | 32.60 | 29.6 |
| | 83 | 909 | Mary Parsons | 32.60 | 29.6 |
| | 82 | 910 | Brick Pres. Ch. | 33.25 | 30.2 |
| | 81 | 911 | Anna M. Warren | 31.95 | 29.0 |
| | 80 | 912 | Hy. C. Sturges | 32.60 | 29.6 |
| | 79 | 913 | De Forest Est. | 32.60 | 29.6 |

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| | | | | |
|---|---|---|---|---|
| 78 | 914 | Mabel W. Stimson | 32.60 | 29.64 |
| 77 | 915 | Mary D. Graham | 32.60 | 29.64 |
| 5 | 916 | Edw. F. Whitney | 32.60 | 29.64 |
| 6 | 917 | Gertrude W. Brown | 24.46 | 22.24 |
| 7 | 918 | Willard S. Brown | 24.46 | 22.24 |
| 8 | 919 | Chas. Triller | 24.46 | 22.24 |
| 9 | 920 | Victoria L. Kent | 24.46 | 22.24 |
| 10 | 921 | Annie A. Roberts | 15.76 | 14.33 |
| 11 | 922 | Lilie P. Tonnele | 15.76 | 14.33 |
| 12 | 923 | Gustave Schirmer | 28.68 | 26.08 |
| 13 | 924 | Robt. W. B. Elliott | 18.27 | 16.61 |
| 14 | 925 | Wm. C. LeGendie | 18.27 | 16.61 |
| 15 | 926 | Jas. F. D. Lanier | 43.47 | 39.53 |
| 17 | 927 | Eustace Conway | 21.74 | 19.77 |
| 18 | 928 | Anna F. Robinson | 19.57 | 17.80 170 |
| 19 | 929 | Harriett D. Potter Est. | 19.57 | 17.80 |
| 20 | 930 | Pan Hellenic Union | 19.57 | 17.80 |
| 21 | 931 | Sarah A. Anthony Est. | 19.57 | 17.80 |
| 22 | 932 | Jno. W. Smyth | 19.57 | 17.80 |
| 76 | 933 | Wm. E. Studdeford | 16.44 | 14.95 |
| 75 | 934 | Marion T. Lyman | 16.14 | 14.68 |
| 74 | 935 | Helen B. Armstrong | 16.14 | 14.68 |
| 73 | 936 | Alice K. Carmalt | 16.14 | 14.68 |
| 72 | 937 | F. Norton Goddard Est. | 16.14 | 14.68 |
| 71 | 938 | Arthur H. Van Brunk | 16.80 | 15.28 |
| 23 | 939 | Jos. Larocque, Jr. | 32.58 | 29.63 |
| 70 | 940 | Patrick J. Flannery | 32.58 | 29.63 |
| 84 | 941 | Harry A. Day | 17.43 | 15.85 |
| 85 | 942 | Alice M. Flagler Est. | 17.43 | 15.85 |
| 86 | 943 | Edmund C. Converse | 17.43 | 15.85 |
| 87 | 944 | Wm. B. Coley | 21.13 | 19.21 171 |
| 88 | 945 | Theresa Damon | 21.13 | 19.21 |
| 5 | 946 | Oliver P. Billings Est. | 21.13 | 19.21 |
| 4 | 947 | Fannie W. Noyes | 29.34 | 26.68 |
| 3 | 948 | Marjorie W. S. Sierck | 26.41 | 24.02 |
| 2 | 949 | Clara B. Porter | 30.48 | 27.72 |
| 1 | 950 | Martha W. Bacon | 33.02 | 30.03 |
| 83 | 951 | Moodua Farms, Inc. | 21.74 | 19.77 |
| 82 | 952 | Flintlock Rlty. Co. | 21.74 | 19.77 |
| 81 | 953 | Marian F. Wendell | 21.74 | 19.77 |
| 80 | 954 | Geo. A. H. Churchill | 21.74 | 19.77 |
| 79 | 955 | Equitable Tr. Co. | 21.74 | 19.77 |
| 78 | 956 | Walter E. Lambert | 21.74 | 19.77 |
| 77 | 957 | Ch. of the New Jerusalem | 97.81 | 89.94 |
| 74 | 958 | Gordon Wendell Est. | 30.29 | 27.54 |

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| | | | | | |
|---|---|---|---|---|---|
| | 73 | 959 | Ichabod P. Stephens | 30.29 | 27.5 |
| | 72 | 960 | Samuel W. Lambert | 30.29 | 27.5 |
| | 71 | 961 | Eliz. B. Van Dusen | 19.31 | 17.5 |
| | 7 | 962 | Bd. of Home Missions of Reformed Ch. in U. S. | 26.73 | 24.3 |
| | 8 | 963 | Edw. L. Keys, Jr. | 27.39 | 24.9 |
| | 9 | 964 | Renneie Process, Inc. | 27.39 | 24.9 |
| | 10 | 965 | Paul L. Phelan | 27.39 | 24.9 |
| | 11 | 966 | Abbie L. Henshaw Est. | 27.39 | 24.9 |
| | 12 | 967 | 117 E. 34th St. Corp. | 27.39 | 24.9 |
| | 13 | 968 | Caroline G. Theband Est. | 29.68 | 26.9 |
| | 14 | 969 | Mary B. Wooley | 29.68 | 26.9 |
| | 15 | 970 | Hartford Hldg. Co. | 29.68 | 26.9 |
| 173 | 16 | 971 | Carolina A. Brundage Est. | 29.68 | 26.9 |
| | 17 | 972 | Folsom Bros., Inc. | 18.59 | 16.9 |
| | 18 | 973 | Lexington-34th St. Realty Co. | 18.59 | 16.9 |
| | 19 | 974 | " " " " " | 18.59 | 16.9 |
| | 20 | 975 | Frank T. Bowers | 19.02 | 17.3 |
| | 70 | 976 | Margaret Currier | 19.02 | 17.3 |
| | 69 | 977 | Jos. Z. Ralley | 18.89 | 17.1 |
| | 68 | 978 | Jared W. Bell | 19.41 | 17.6 |
| | 67 | 979 | Gertrude H. Ogden | 21.97 | 19.9 |
| | 22 | 980 | Lexington-34th St. Rlty Co. | 22.80 | 20.7 |
| | 21 | 981 | " " " " " | 23.95 | 21.7 |
| 893 | 64 | 982 | Y. W. C. A., 600 Lex. Ave. | 32.69 | 29.7 |
| | 65 | 983 | Wm. F. Bridge Est. | 32.58 | 29.6 |
| | 66 | 984 | Chas. C. Spear | 32.58 | 29.6 |
| | 67 | 985 | Sog Realty Co. | 32.74 | 29.7 |
| | 22 | 986 | Mary E. Enos | 28.31 | 25.7 |
| 174 | 23 | 987 | Robert W. Goelet | 25.75 | 23.4 |
| | 24 | 988 | " " " | 22.89 | 20.8 |
| | 25 | 989 | " " " | 24.76 | 22.5 |
| | 26 | 990 | Mabel T. Duryee | 28.57 | 25.9 |
| | 27 | 991 | Chas. F. Roth | 26.08 | 23.7 |
| | 28 | 992 | Willard P. Butler | 26.08 | 23.7 |
| | 29 | 993 | Agusta Rucker | 20.86 | 18.9 |
| | 30 | 994 | Sarah F. Cutcheon | 20.86 | 18.9 |
| | 31 | 995 | Christine Straiton | 18.27 | 16.6 |
| | 32 | 996 | Ladies' Christian Union | 18.27 | 16.6 |
| | 33 | 997 | " " " | 26.96 | 24.5 |
| | 34 | 998 | " " " | 17.57 | 15.9 |
| | 35 | 999 | " " " | 23.44 | 21.3 |
| | 36 | 1000 | " " " | 23.86 | 21.7 |
| | 37 | 1001 | Gertrude D. Partridge | 23.86 | 21.7 |
| | 38 | 1002 | Margt. Dann | 15.50 | 14.1 |

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|---|---|---|---|---|
| 39 | 1003 | Ellen L. Auchmuty | 15.50 | 14.10 |
| 40 | 1004 | Henry Hof | 15.21 | 13.83 |
| 63 | 1005 | Chas. C. Burlingham | 26.08 | 23.72 |
| 62 | 1006 | Hy. C. Meyer | 26.08 | 23.72 |
| 61 | 1007 | Florence H. Fischer | 26.08 | 23.72 |
| 60 | 1008 | Wm. M. Leslie *et al.* | 26.08 | 23.72 |
| 59 | 1009 | Carrie H. Thedd | 26.08 | 23.72 |
| 58 | 1010 | Mary L. M. Whitman | 26.08 | 23.72 |
| 57 | 1011 | Henrietta C. Jones | 38.06 | 34.61 |
| 56 | 1012 | Cornelius Gallagher | 28.70 | 26.10 |
| 55 | 1013 | John C. Hart Rlty. Co. | 28.04 | 25.50 |
| 54 | 1014 | Clinslie M. Gillet *et al.* | 13.74 | 12.49 |
| 53 | 1015 | Allan A. Robbins | 13.74 | 12.49 |
| 52 | 1016 | John Jay *et al.* | 13.74 | 12.49 |
| 51 | 1017 | Augusta L. Elmendorf | 13.74 | 12.49 176 |
| 50 | 1018 | Jno. G. de la M. Borglum | 39.82 | 36.21 |
| 49 | 1019 | Peter Freess, Jr. | 19.77 | 17.98 |
| 48 | 1020 | Sam'l Katz | 19.28 | 17.53 |
| 47 | 1021 | Mich'l McNamara | 19.28 | 17.53 |
| 46 | 1022 | Jno. F. Pfeifer | 19.24 | 17.50 |
| 45 | 1023 | " " " | 18.44 | 16.77 |
| 44 | 1024 | Rudolph E. Bohlen | 18.44 | 16.77 |
| 43 | 1025 | Mary Faulkner *et al.* | 26.41 | 24.02 |
| 42 | 1026 | Henry Hof | 26.41 | 24.02 |
| 41 | 1027 | Lillian Hof | 28.53 | 25.94 |
| 892 62 | 1028 | Philip L. Crovat Est. | 26.41 | 24.02 |
| 63 | 1029 | Kath. di P. Pease | 24.04 | 21.86 |
| 64 | 1030 | Royal Whitman | 26.94 | 24.50 |
| 65 | 1031 | Orson D. Munn | 26.94 | 24.50 |
| 22 | 1032 | Bryn Manor Club of City of N. Y. | 42.26 | 38.43 177 |
| 23 | 1033 | Candace Stimson | 31.78 | 28.90 |
| 24 | 1034 | Hy. L. Stimson | 23.77 | 21.62 |
| 25 | 1035 | Alice W. Goddard | 32.62 | 29.66 |
| 26 | 1036 | Mabel T. Duryee | 30.00 | 27.28 |
| 61 | 1037 | Theo. V. A. Troffer | 26.08 | 23.72 |
| 60 | 1038 | Jno. G. Floyd Est. | 26.08 | 23.72 |
| 59 | 1039 | Geo. O'Hanlan | 20.86 | 18.97 |
| 27 | 1040 | Chas. F. Roth | 26.08 | 23.72 |
| 58 | 1041 | Ida H. Whifflesey | 20.86 | 18.97 |
| 28 | 1042 | Wilhiard P. Butler | 22.17 | 20.16 |
| 57 | 1043 | John W. Stephens Rlty., Inc. | 18.27 | 16.61 |
| 29 | 1044 | Augusta Rucker | 26.08 | 23.72 |
| 56 | 1045 | Alice Kauser | 18.27 | 16.61 |
| 30 | 1046 | Sarah F. Cutcheon | 26.08 | 23.72 |
| 55 | 1047 | Jno. C. G. Hupfel | 26.08 | 23.72 |

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| | | | | | |
|---|---|---|---|---|---|
| | 54 | 1048 | Mary E. Morton | 26.08 | 23.72 |
| | 31 | 1049 | Christine Straiton *et al.* | 24.78 | 22.53 |
| | 32 | 1050 | Ladies' Christian Union | 24.78 | 22.53 |
| | 53 | 1051 | Amy A. C. Montague | 26.08 | 23.72 |
| | 52 | 1052 | Sara G. Muchall | 26.08 | 23.72 |
| | 33 | 1053 | Ladies' Christian Union | 20.22 | 18.39 |
| | 34 | 1054 | " " " | 20.22 | 18.39 |
| | 51 | 1055 | Sarah Lawrence Sutton | 26.08 | 23.72 |
| | 35 | 1056 | Ladies' Christian Union | 20.22 | 18.39 |
| | 36 | 1057 | " " " | 20.22 | 18.39 |
| | 50 | 1058 | Walstein M. Tompkins | 26.08 | 23.72 |
| | 49 | 1059 | Maude E. Eberle | 26.08 | 23.72 |
| | 37 | 1060 | 163 E. 36th St. Corp'n | 26.08 | 23.72 |
| 179 | 48 | 1061 | Dorothy L. W. O'Connor | 18.20 | 16.55 |
| | 38 | 1062 | 163 E. 36th St. Corp'n | 21.72 | 19.75 |
| | 47 | 1063 | Cathárine L. Bayles Est. *et. al.* | 24.30 | 22.10 |
| | 46 | 1064 | Yale University of New Haven, Conn, | 24.19 | 22.00 |
| | 45 | 1065 | " " " " " " | 24.30 | 22.10 |
| | 44 | 1066 | " " " " " " | 30.86 | 28.06 |
| | 43 | 1067 | " " " " " " | 30.37 | 27.72 |
| | 42 | 1068 | " " " " " " | 24.30 | 22.10 |
| | 41 | 1069 | " " " " " " | 20.86 | 18.97 |
| | 40 | 1070 | " " " " " " | 20.86 | 18.97 |
| | 39 | 1071 | Emma C. Gerdes | 20.86 | 18.97 |
| 891 | 27 | 1072 | P. E. Church of Epiphany | 135.32 | 123.05 |
| | 24 | 1073 | " " " " | 27.69 | 25.18 |
| | 69 | 1074 | Alice Kambourian | 20.63 | 18.76 |
| | 68 | 1075 | Wm. H. Russell | 20.63 | 18.76 |
| | 67 | 1076 | " " " | 20.63 | 18.76 |
| 180 | 66 | 1077 | " " " | 62.00 | 56.38 |
| | 62 | 1078 | Isidore H. Kramer *et al.* | 81.51 | 74.12 |
| | 59 | 1079 | " " " " " | 81.51 | 74.12 |
| | 58 | 1080 | Anna V. M. Gambrill | 10.70 | 11.86 |
| | 57 | 1081 | " " " " | 10.70 | 11.86 |
| | 56 | 1082 | Gwendolyn L. Wiseman | 10.70 | 11.86 |
| | 55 | 1083 | Hy. Clews | 21.39 | 23.76 |
| | 48 | 1085 | Bessie W. Gillette | 10.70 | 11.86 |
| | 49 | 1086 | Carrie Tolfre Est. | 10.70 | 11.86 |
| | 50 | 1087 | Harriet W. Frishmuth | 10.70 | 11.86 |
| | 51 | 1088 | Isabelle Von Linden Est. | 10.70 | 11.86 |
| | 52 | 1089 | Temple Bowdoin Est. | 10.70 | 11.86 |
| | 46 | 1090 | Edw. H. Coster Est. | 65.22 | 59.31 |
| | 45 | 1091 | Hy. C. School | 32.60 | 29.64 |
| | 44 | 1092 | Jno. Martin | 32.60 | 29.64 |
| | 29 | 1093 | Frank L. Hastings | 26.54 | 24.13 |

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|---|---|---|---|---|
| 30 | 1094 | Porterfield Constn. Co. | 100.55 | 91.44 |
| 34 | 1095 | Thos. E. Broadway Est. | 34.56 | 31.43 |
| 35 | 1096 | Chas. C. Tegethoff | 32.60 | 29.64 |
| 36 | 1097 | Temple Bowdoin Est. | 30.00 | 27.28 |
| 37 | 1098 | Emily P. Coster | 30.00 | 27.28 |
| 38 | 1099 | Jas. Russell Est. | 26.08 | 23.72 |
| 43 | 1100 | " " " | 19.57 | 17.80 |
| 42 | 1101 | " " " | 19.57 | 17.80 |
| 41 | 1102 | " " " | 19.57 | 17.80 |
| 40 | 1103 | " " " | 19.57 | 17.80 |
| 39 | 1104 | " " " | 26.07 | 23.71 |
| 890 64 | 1105 | Packard Commercial School | 97.14 | 88.33 |
| 65 | 1106 | Helen A. Bell | 34.11 | 31.02 |
| 66 | 1107 | Jno. Renehan | 26.41 | 24.02 182 |
| 23 | 1108 | Chas. L. Brown | 26.41 | 24.02 |
| 24 | 1109 | Julia L. Nourse | 21.13 | 19.21 |
| 25 | 1110 | Chas. H. Russell Est. *et al.* | 22.19 | 20.18 |
| 26 | 1111 | Wm. Connor | 22.19 | 20.18 |
| 27 | 1112 | Archibald M. Shrady | 24.30 | 22.10 |
| 28 | 1113 | Terminal Rlty. Co. | 19.65 | 17.87 |
| 29 | 1114 | Franklin M. Knowles | 23.11 | 21.02 |
| 30 | 1115 | Alex Wolff | 23.11 | 21.02 |
| 61 | 1116 | Chas. C. Nadal | 18.99 | 17.27 |
| 31 | 1117 | Peter A. Garry Est. | 23.11 | 21.02 |
| 32 | 1118 | Cath. T. Reiley Est. | 27.51 | 25.02 |
| 60 | 1119 | Tompkins McIlvaine | 18.99 | 17.27 |
| 59 | 1120 | " " | 18.99 | 17.27 |
| 33 | 1121 | Wm. J. Douglass | 27.51 | 25.02 |
| 57 | 1122 | Durham Rlty. Corp'n | 57.07 | 51.90 |
| 34 | 1123 | Geo. G. Moore | 110.05 | 100.07 183 |
| 54 | 1124 | Samuel Katz | 84.98 | 77.28 |
| 38 | 1125 | Chas. E. Goodhue | 20.14 | 18.31 |
| 53 | 1126 | Mary Pollard Est. | 19.32 | 17.57 |
| 39 | 1127 | Chas. E. Goodhue | 16.60 | 15.10 |
| 52 | 1128 | City of N. Y. | 57.43 | 52.22 |
| 41 | 1129 | Purchase H'ld'g Corp'n | 69.02 | 62.76 |
| 49 | 1130 | Julius Goldwater | 28.90 | 26.28 |
| 48 | 1131 | Laurence Schum Est. | 28.90 | 26.28 |
| 47 | 1132 | Newbold Edgar *et al.* | 28.90 | 26.28 |
| 46 | 1133 | Maybelle Rlty. Co. | 28.90 | 26.28 |
| 45 | 1134 | " " " | 21.13 | 19.21 |
| 44 | 1135 | Geo. Ehret | 20.80 | 18.91 |
| 43 | 1136 | Wm. L. Cole Est. | 18.34 | 16.68 |
| 42 | 1137 | Arb't H. Bultman Est. *et al.* | 15.86 | 14.42 |

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|---|---|---|---|---|---|
| 918 | 57 | 1138 | Jas. Rozell Est., Inc. | 22.19 | 20.18 |
| | 58 | 1139 | Ellen Corcoran Est. | 22.19 | 20.18 |
| | 59 | 1140 | Ella V. von E. Wendel | 22.19 | 20.18 |
| | 60 | 1141 | Maltilda B. Beinhauer | 24.27 | 22.07 |
| | 61 | 1142 | Ferdinand Beinhauer Est. | 21.29 | 19.36 |
| | 4 | 1143 | Mary E. A. Wendel | 34.20 | 31.10 |
| | 3 | 1144 | Louisa H. Clausnitzer | 34.20 | 31.10 |
| | 1 | 1145 | Mary E. A. Wendel | 45.68 | 41.54 |
| | 5 | 1146 | " " " " | 22.85 | 20.78 |
| | 7 | 1147 | Jos. Hall *et al.* | 35.17 | 31.98 |
| | 8 | 1148 | " " " " | 65.62 | 59.67 |
| | 10 | 1149 | Lee Holstein | 20.80 | 18.91 |
| | 11 | 1150 | " " | 20.27 | 19.43 |
| 185 | 12 | 1151 | " " | 19.74 | 17.95 |
| | 13 | 1152 | Louis Bergen | 28.63 | 26.03 |
| | 14 | 1153 | N. Y. Telephone Co. | 121.26 | 110.27 |
| | 56 | 1154 | Jno. G. Weigold | 23.29 | 21.18 |
| | 55 | 1155 | Wm. H. Brew | 23.29 | 21.18 |
| | 53 | 1156 | Hulbert Peck | 26.85 | 24.42 |
| | 52 | 1157 | Hoy A. Bade | 37.95 | 34.51 |
| | 51 | 1158 | " " " | 37.19 | 35.64 |
| | 50 | 1159 | J. Chr. G. Hupfel Brewing Co. | 35.37 | 32.16 |
| | 48 | 1160 | " " " " " " | 46.60 | 42.38 |
| | 47 | 1161 | " " " " " " | 29.95 | 27.24 |
| | 46 | 1162 | " " " " " " | 29.95 | 27.24 |
| | 45 | 1163 | " " " " " " | 33.28 | 30.26 |
| | 17 | 1164 | Geo. P. Reinhard | 23.88 | 21.72 |
| | 18 | 1165 | Alice M. Swift | 22.69 | 20.63 |
| | 21 | 1166 | City of N. Y. | 446.79 | 406.29 |
| 186 | 35 | 1167 | Hugo Lassner | 21.21 | 19.29 |
| | 34 | 1168 | Katharina Holm | 20.60 | 18.73 |
| | 33 | 1169 | " " | 20.60 | 18.73 |
| | 32 | 1170 | " " | 20.60 | 18.73 |
| | 31 | 1171 | Anthony Iquinto *et al.* | 20.60 | 18.73 |
| | 30 | 1172 | Annie Goldberg | 17.62 | 16.02 |
| | 29 | 1173 | Regina Katz | 17.62 | 16.02 |
| | 28 | 1174 | Montague Aaron *et al.* | 17.62 | 16.02 |
| | 27 | 1175 | Annie M. Harris | 26.07 | 23.71 |
| | 25 | 1176 | Elmer E. Hartzell | 26.15 | 23.78 |
| 917 | 56 | 1177 | Peter Doelger Rlty. Co. | 32.69 | 29.73 |
| | 57 | 1178 | E[illegible]ard Dewender | 32.58 | 29.63 |
| | 58 | 1179 | Nathan Hebald *et al.* | 32.58 | 29.63 |
| | 59 | 1180 | " " " " | 32.58 | 29.63 |
| | 4 | 1181 | Annie Dode *et al.* | 32.58 | 29.63 |

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|---|---|---|---|---|---|
| 3 | 1182 | Wm. F. Miffendorf | 32.58 | 29.63 | |
| 2 | 1183 | Ellen A. Corcoran Est. | 32.58 | 29.63 | |
| 1 | 1184 | Nichoias Betjeman (tr.) | 26.15 | 23.78 | |
| 5 | 1185 | Nicholas Betjeman | 6.53 | 5.94 | |
| 8 | 1186 | B. Altman & Co. | 355.36 | 323.15 | |
| 51 | 1187 | Geo. H. Jones | 32.60 | 29.64 | |
| 50 | 1188 | Jno. J. Radley | 32.60 | 29.64 | |
| 49 | 1189 | " " " | 32.60 | 29.64 | |
| 47 | 1190 | 218 E. 37th St. Co. | 65.22 | 59.31 | |
| 15 | 1191 | Elsa A. Beckel | 87.10 | 79.20 | |
| 46 | 1192 | John G. McCarthy | 22.61 | 20.56 | |
| 44 | 1193 | Fredk. Vogel Est. | 44.72 | 40.67 | |
| 17 | 1194 | Sisters of Charity | 88.90 | 80.84 | |
| 42 | 1195 | Chas. Grimmer *et al.* | 30.04 | 27.32 | 188 |
| 20 | 1196 | Sisters of St. Vincent de Paul | 26.08 | 23.72 | |
| 41 | 1197 | Otto Grimmer | 26.08 | 23.72 | |
| 21 | 1198 | Joseph F. Boyle | 26.08 | 23.72 | |
| 40 | 1199 | Chas. Grimmer *et al.* | 26.08 | 23.72 | |
| 22 | 1200 | Thos. Madden Est. | 26.08 | 23.72 | |
| 23 | 1201 | Florence A. McConnell | 26.08 | 23.72 | |
| 38 | 1202 | Jacob Barnett | 52.17 | 47.44 | |
| 24 | 1203 | Ellen F. H. Fogarty *et al.* | 26.08 | 23.72 | |
| 37 | 1204 | Robt. E. Kelly | 26.08 | 23.72 | |
| 36 | 1205 | Thos. F. Quinlan | 13.05 | 11.87 | |
| 35 | 1206 | " " " | 13.05 | 11.87 | |
| 25 | 1207 | Ellen F. H. Fogarty *et al.* | 20.60 | 18.73 | |
| 34 | 1208 | Elmer E. Hartzell | 21.25 | 19.32 | |
| 33 | 1209 | Joseph P. Mulvey | 21.18 | 19.26 | |
| 32 | 1210 | Jas. A. Humes | 34.20 | 31.10 | |
| 31 | 1211 | Margt. Humes | 25.67 | 23.34 | 189 |
| 30 | 1212 | Denis A. McAuliffe | 25.67 | 23.34 | |
| 29 | 1213 | Carrie V. McAuliffe | 23.77 | 21.62 | |
| 28 | 1214 | Herman Buchtenkirch | 20.78 | 18.92 | |
| 27 | 1215 | " " | 27.77 | 25.25 | |
| 26 | 1216 | Peter Doelger Realty Co. | 26.41 | 24.02 | |
| 916 61 | 1217 | Wm. F. Mulcahy *et al.* | 20.91 | 19.01 | |
| 62 | 1218 | " " " " " | 20.85 | 18.96 | |
| 63 | 1219 | Joseph Kaplan | 32.58 | 29.63 | |
| 64 | 1220 | Emanuel A. Gardner | 40.72 | 37.03 | |
| 5 | 1221 | Christina A. Koch | 32.58 | 29.63 | |
| 4 | 1222 | Chas. Hoenninger | 15.40 | 14.00 | |
| 3 | 1223 | " " | 15.19 | 13.81 | |
| 2 | 1224 | " " | 15.12 | 13.75 | |
| 1 | 1224a | Emanuel Arnstein *et al.* | 15.12 | 13.75 | |
| 6 | 1225 | " " " " | 19.00 | 17.28 | |

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|---|---|---|---|---|
| 7 | 1226 | Emanuel Arnstein Est. *et al* | 18.03 | 16.40 |
| 8 | 1227 | Mary L. Campion | 26.08 | 23.72 |
| 60 | 1228 | Wm. F. Mulcahy *et al.* | 23.49 | 21.36 |
| 58 | 1229 | Wm. Thomas | 24.46 | 22.24 |
| 9 | 1230 | Jas. McCartney Est. | 26.08 | 23.72 |
| 57 | 1231 | " " " | 32.60 | 29.64 |
| 10 | 1232 | Jno. Gallagher Est. | 26.08 | 23.72 |
| 11 | 1233 | David McFall | 26.08 | 23.72 |
| 56 | 1234 | Tillie Lelymann | 32.60 | 29.64 |
| 12 | 1235 | Jas. G. Shand Est. | 26.08 | 23.72 |
| 55 | 1236 | Theresa A. Fitzsimons | 32.60 | 29.64 |
| 13 | 1237 | Louis F. Marx | 70.43 | 64.05 |
| 54 | 1238 | Theresa A. Fitzsimons | 30.00 | 27.28 |
| 53 | 1239 | Jas. M. Fitzsimons | 35.22 | 32.03 |
| 191 15 | 1240 | Alex. R. Boyce | 46.21 | 42.01 |
| 52 | 1241 | C. Keogh | 32.60 | 29.64 |
| 51 | 1242 | Thos. B. Owen | 26.08 | 22.72 |
| 17 | 1243 | Jno. Murray Est. | 52.94 | 48.48 |
| 50 | 1244 | Philip Tenzer | 52.17 | 47.44 |
| 19 | 1245 | Maria Wise Est. | 26.08 | 23.72 |
| 48 | 1246 | Anna T. Walton | 32.60 | 29.64 |
| 20 | 1247 | Chas. E. Kessler Est. | 26.08 | 23.72 |
| 47 | 1248 | Anne Katz | 32.60 | 29.64 |
| 21 | 1249 | Margt. A. Byrne | 26.08 | 23.72 |
| 46 | 1250 | Anne Katz | 32.60 | 29.64 |
| 22 | 1251 | Mary Lindsay | 26.08 | 23.72 |
| 23 | 1252 | Wm. E. White | 21.74 | 19.78 |
| 45 | 1253 | Margt. F. Downs | 50.95 | 46.33 |
| 44 | 1253a | " " " | 14.26 | 12.97 |
| 192 24 | 1254 | Babetta Fergg | 21.74 | 19.77 |
| 25 | 1255 | Cath. Maloney | 21.74 | 19.77 |
| 42 | 1256 | Charlotte M. Stegman | 32.60 | 29.64 |
| 26 | 1257 | Jno. J. Reynolds | 32.60 | 29.64 |
| 41 | 1258 | Jno. Cailanan | 32.60 | 29.64 |
| 27 | 1259 | John J. Reynolds | 30.00 | 27.28 |
| 28 | 1260 | Chas. H. Douglass | 12.73 | 11.58 |
| 29 | 1261 | Chas. C. Ardolino | 12.73 | 11.58 |
| 37 | 1262 | Sol. Haas | 32.62 | 29.66 |
| 36 | 1263 | " " | 32.62 | 29.66 |
| 35 | 1264 | Meyer Plate Glass Co. | 32.62 | 29.66 |
| 34 | 1265 | Yetta Goldstein | 32.62 | 29.66 |
| 33 | 1266 | Harris E. " | 33.92 | 30.85 |
| 32 | 1267 | " " " | 33.92 | 30.85 |
| 31 | 1268 | Kathryn L. Cullom | 19.90 | 18.10 |
| 30 | 1269 | " " " | 19.90 | 18.10 |

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|---|---|---|---|---|---|
| 915 | 61 | 1270 | Jno. H. Kroger | 15.45 | 14.05 |
| | 62 | 1271 | Ludo Weber Wilkens | 14.53 | 13.21 |
| | 63 | 1272 | Chas. Hoenninger | 14.37 | 13.07 |
| | 64 | 1273 | Jno. S. Baughman | 14.37 | 13.01 |
| | 60 | 1273a | Edw. D. McGreal | 19.57 | 17.80 |
| | 65 | 1274 | Emma C. Sackett | 32.58 | 29.63 |
| | 4 | 1275 | Marion C. McCann | 32.58 | 29.63 |
| | 3 | 1276 | Margt. A. Pooler | 32.58 | 29.63 |
| | 2 | 1277 | Robt. L. Irving | 32.58 | 29.63 |
| | 1 | 1278 | John A. Brakmann | 32.69 | 29.73 |
| | 5 | 1279 | John Putre | 32.60 | 29.64 |
| | 6 | 1280 | 211 E. 34th St. Realty Co. | 16.31 | 14.83 |
| | 7 | 1281 | " " " " " " | 16.31 | 14.83 |
| | 8 | 1282 | Cath. Neus | 24.46 | 22.24 |
| | 9 | 1283 | Wm. J. Leazenbee | 24.46 | 22.24 |
| | 10 | 1284 | " " " | 24.46 | 22.24 |
| | 11 | 1285 | " " " | 24.46 | 22.24 |
| | 58 | 1286 | Amelia W. Byrne | 16.31 | 14.83 |
| | 59 | 1286a | Seligman Hanan | 19.57 | 17.80 |
| | 57 | 1287 | Amelia W. Byrne | 16.52 | 15.02 |
| | 56 | 1288 | Ventura Borras | 32.60 | 29.64 |
| | 55 | 1289 | Sarah Barrington | 21.74 | 19.77 |
| | 54 | 1290 | Jno. Gallagher | 21.74 | 19.77 |
| | 53 | 1291 | Hy. O. Wolters | 21.74 | 19.77 |
| | 52 | 1292 | Adolphus F. Warburton Est. | 21.74 | 19.77 |
| | 51 | 1293 | Alice J. Conner | 21.74 | 19.77 |
| | 19 | 1294 | Borden Farm Products | 208.66 | 189.75 |
| | 50 | 1295 | Emma A. Lubbe | 21.74 | 19.77 |
| | 49 | 1296 | Jno. R. Keating | 28.70 | 26.10 |
| | 48 | 1296a | " " " | 37.38 | 33.99 |
| | 47 | 1297 | " " " | 26.08 | 23.72 |
| | 46 | 1298 | " " " | 25.38 | 23.08 |
| | 45 | 1299 | Jacob Metsch | 25.93 | 23.58 |
| | 44 | 1300 | " " | 32.60 | 29.64 |
| | 20 | 1301 | Jno. J. Courtney | 32.60 | 29.64 |
| | 43 | 1302 | Jno. L. Keating | 32.60 | 29.64 |
| | 21 | 1303 | Cath. E. Conroy | 32.60 | 29.64 |
| | 42 | 1304 | Carrie A. Britton | 21.95 | 13.04 |
| | 41 | 1305 | Arthur W. Crockett | 21.31 | 19.97 |
| | 22 | 1306 | Jos. Garry Est. | 32.60 | 29.64 |
| | 40 | 1307 | Eugene Coulon | 21.95 | 19.96 |
| | 23 | 1308 | Manhattan R. R. Co. | 65.24 | 59.30 |
| | 39 | 1309 | Wm. H. Steinkamp | 32.60 | 29.64 |
| | 38 | 1310 | " " " | 32.60 | 29.64 |
| | 26 | 1311 | F. Norton Goddard | 31.30 | 28.46 |

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| | 37 | 1312 | Wm. H. Steinkamp | 31.30 | 28.46 |
| | 36 | 1313 | " " " | 20.16 | 18.33 |
| | 35 | 1314 | " " " | 19.74 | 17.95 |
| | 34 | 1315 | Patk. Tierney | 19.74 | 17.95 |
| | 33 | 1316 | Moses Stern | 19.74 | 17.95 |
| | 32 | 1317 | Silas Schwartz | 19.74 | 17.95 |
| | 31 | 1318 | Harris A. Solomon | 19.74 | 17.95 |
| | 30 | 1319 | Thos. F. Quinlan | 19.74 | 17.95 |
| | 29 | 1320 | Sam'l Haas | 19.74 | 17.95 |
| | 28 | 1321 | Lillian M. Houghton | 19.45 | 17.69 |
| | 27 | 1322 | Wilfred A. Openhym | 20.45 | 18.60 |
| 1285 | 1 | 1323 | Geo. Kemp R. E. Co. | 66.09 | 60.10 |
| | 2 | 1324 | " " " " " | 36.98 | 33.63 |
| 197 | 3 | 1325 | " " " " " | 67.18 | 61.09 |
| | 71 | 1326 | Democratic Club | 55.46 | 50.43 |
| | 69 | 1327 | Geo. Kemp R. E. Co. | 315.27 | 286.69 |
| | 9 | 1328 | H. Amerman | 29.43 | 26.76 |
| | 64 | 1329 | Nathaniel A. Berwin | 28.38 | 25.87 |
| | 10 | 1330 | Claudia B. Stone | 29.43 | 26.76 |
| | 11 | 1331 | Clara S. Kurzman | 29.43 | 26.76 |
| | 63 | 1332 | Susan F. Dewing | 28.38 | 25.81 |
| | 62 | 1333 | C. Victor. Twiss Est. | 28.38 | 25.81 |
| | 12 | 1334 | 15 E. 49th St. Inc. | 44.15 | 40.15 |
| | 61 | 1335 | Susan T. Seed | 28.64 | 26.04 |
| | 13 | 1336 | U. S. Trucking Co. | 33.15 | 30.15 |
| | 59 | 1337 | Hampton Shops Inc. | 74.51 | 67.76 |
| | 14 | 1338 | Mary C. Morrison | 33.15 | 30.15 |
| | 58 | 1339 | Almy Rlty. Corpn. | 18.86 | 17.15 |
| | 57½ | 1340 | " " " | 18.49 | 16.81 |
| 198 | 57 | 1341 | " " " | 18.49 | 16.81 |
| | 56½ | 1342 | " " " | 18.49 | 16.81 |
| | 56 | 1343 | " " " | 18.49 | 16.81 |
| | 17 | 1344 | " " " | 18.49 | 16.81 |
| | 16½ | 1345 | " " " | 18.49 | 16.81 |
| | 16 | 1346 | " " " | 18.49 | 16.81 |
| | 15½ | 1347 | " " " | 18.49 | 16.81 |
| | 15 | 1348 | " " " | 18.86 | 17.15 |
| 1284 | 69 | 1349 | Eliz. W. White | 36.98 | 33.63 |
| | 70 | 1350 | Caroline White | 33.02 | 30.03 |
| | 71 | 1351 | Frederica Inc. | 33.02 | 30.03 |
| | 72 | 1352 | Marie H. Clemens | 29.60 | 26.92 |
| | 4 | 1353 | Ida B. Flower | 35.65 | 32.42 |
| | 1 | 1354 | Robt. Goelet | 70.54 | 64.15 |
| | 5 | 1355 | Ida B. Flower | 33.15 | 30.15 |
| | 68 | 1356 | Eliza W. White | 33.15 | 30.15 |

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|---|---|---|---|---|
| 6 | 1357 | N. Y. Bible Society | 34.47 | 36.35 |
| 67 | 1358 | Eliza W. White | 33.15 | 30.15 |
| 7 | 1359 | Augusta Poliferne | 31.82 | 28.94 |
| 66 | 1360 | Eliza W. White | 33.15 | 30.15 |
| 8 | 1361 | Mary N. Perkins | 33.15 | 30.15 |
| 65 | 1362 | Mordecai Rlty. Co. | 21.44 | 19.50 |
| 64 | 1362a | " " " | 21.44 | 19.50 |
| 9 | 1363 | Mary C. Morrison | 33.15 | 30.15 |
| 10 | 1363a | E. 48th St. Corpn. | 66.29 | 60.28 |
| 63 | 1364 | Nestle Patent Holding Co. | 56.58 | 51.45 |
| 62 | 1365 | Ernest Ehrmann | 33.15 | 30.15 |
| 12 | 1366 | Rosa S. Barzaghi | 33.15 | 30.15 |
| 61 | 1367 | Centre-White Co. | 33.15 | 30.15 |
| 13 | 1368 | 19 E. 48th St. Inc. | 33.15 | 30.15 |
| 60 | 1369 | David M. Morrison | 33.15 | 30.15 |
| 59 | 1370 | Caroline A. Grant Est. | 33.55 | 30.51 |
| 58 | 1371 | Advocate Rlty. Co. | 19.17 | 17.43 |
| 57 | 1372 | " " " | 16.90 | 15.37 |
| 56 | 1373 | " " " | 21.18 | 19.26 |
| 55 | 1374 | Corinne R. Robinson | 23.16 | 21.06 |
| 17 | 1375 | Clarence S. Day | 43.33 | 39.40 |
| 16 | 1376 | Kennette Dows Est. | 30.62 | 27.84 |
| 15 | 1377 | Butnell Bldg. Corpn. | 30.11 | 27.38 |
| 14 | 1378 | Thompson J. S. Flint | 33.88 | 30.81 |
| 283 69 | 1379 | Robt. W. Goelet | 83.20 | 75.66 |
| 71 | 1380 | " " " | 33.02 | 30.03 |
| 72 | 1381 | 587 5th Ave. Inc. | 49.52 | 45.03 |
| 4 | 1382 | Warren C. Beach | 25.09 | 22.82 |
| 2 | 1383 | Marcus Daly | 51.50 | 46.83 |
| 1 | 1384 | Helen M. G. Shepard | 55.99 | 50.91 |
| 5 | 1385 | " " " " | 33.15 | 30.15 |
| 6 | 1386 | Robt. W. Goelet | 33.15 | 30.15 |
| 67 | 1387 | " " " | 33.15 | 30.15 |
| 7 | 1388 | Islesbrook Estates Inc. | 33.15 | 30.15 |
| 66 | 1389 | Edmund Randolph | 33.15 | 30.15 |
| 8 | 1390 | Helen G. Huntington | 33.15 | 30.15 |
| 64 | 1391 | Louisa M. Gerry Est. | 66.30 | 60.29 |
| 9 | 1392 | Adela A. Dortic Est. | 33.15 | 30.15 |
| 10 | 1393 | Henry G. Trumbower | 33.15 | 30.15 |
| 63 | 1394 | Zone Trading Corpn. | 33.15 | 30.15 |
| 11 | 1395 | Titus E. Eddy | 33.15 | 30.15 |
| 62 | 1396 | Julian A. Benjamin | 33.15 | 30.15 |
| 12 | 1397 | Gertrude M. Pinchot | 33.15 | 30.15 |
| 61 | 1398 | Julia Ward | 33.15 | 30.15 |

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| | | | | | |
|---|---|---|---|---|---|
| | 13 | 1399 | John H. Smith | 33.48 | 30.45 |
| | 60 | 1400 | Advocate Rlty. Co. | 33.48 | 30.45 |
| | 14 | 1401 | Abr. Jacob Est. | 44.41 | 40.38 |
| | 59 | 1402 | Advocate Rlty. Co. | 33.15 | 30.15 |
| | 15 | 1403 | Marg't E. McCormick | 22.11 | 20.11 |
| | 58 | 1404 | Rachel A. McEagan | 33.15 | 30.15 |
| | 17 | 1405 | Florence B. A. Fish | 59.33 | 53.95 |
| | 56 | 1406 | Lily H. Weinberg | 59.33 | 53.95 |
| 1282 | 65 | 1407 | Robt. S. Gerry | 265.18 | 241.14 |
| | 64 | 1408 | " " " | 106.07 | 96.46 |
| | 56 | 1409 | " " " | 185.63 | 168.80 |
| | 1 | 1410 | Elbridge T. Gerry | 238.66 | 217.03 |
| | 8 | 1411 | " " " | 132.59 | 120.57 |
| 203 | 17 | 1412 | Robt. Goelet | 185.63 | 168.80 |
| 1285 | 53 | 1413 | Lilla T. Taylor | 29.71 | 27.02 |
| | 52 | 1414 | Annie T. Thorne Est. | 34.01 | 30.93 |
| | 51 | 1415 | Annie Stone | 35.81 | 32.56 |
| | 54 | 1416 | Jas. B. Haggin Est. | 30.37 | 27.62 |
| | 24 | 1417 | Edson Bradley | 25.91 | 23.56 |
| | 21 | 1418 | J. Clarence Davies | 92.10 | 83.75 |
| | 25 | 1419 | Anne W. D. Burden | 26.52 | 24.12 |
| | 25½ | 1420 | Chas. P. Salting | 26.52 | 24.12 |
| | 50 | 1421 | Sarah J. Grimell | 30.49 | 27.73 |
| | 26 | 1422 | Alice W. Hodges | 26.52 | 24.12 |
| | 49 | 1423 | 38 E. 50th St. Corpn. | 30.49 | 27.73 |
| | 27 | 1424 | Royal P. Carroll | 29.17 | 26.56 |
| | 48 | 1425 | Collectors Galleries Inc. | 30.49 | 27.73 |
| | 28 | 1426 | Charlotte D. M. Cardeza | 29.17 | 26.53 |
| 204 | 47 | 1427 | Geo. D. Stewart | 29.17 | 26.53 |
| | 29 | 1428 | Edna S. Sidenberg | 26.52 | 24.12 |
| | 46 | 1429 | John A. Bensel | 27.84 | 25.32 |
| | 30 | 1430 | Elizabeth H. Redfield | 27.84 | 25.32 |
| | 45 | 1431 | Mildred Milton | 26.52 | 24.12 |
| | 31 | 1432 | Seah B. Squier | 27.84 | 25.32 |
| | 44 | 1433 | Marg't B. Gilbert | 25.20 | 22.92 |
| | 43 | 1434 | Genevra W. H. Woodruff | 25.20 | 22.92 |
| | 36 | 1435 | N. Y. State Rlty. & Term. Co. | 367.26 | 333.97 |
| 1284 | 52½ | 1437 | Annie B. Bruns | 28.84 | 26.23 |
| | 23 | 1438 | Backman Estate | 77.26 | 70.26 |
| | 22 | 1439 | " | 25.75 | 23.42 |
| | 21 | 1440 | Francis Hustace Est. | 29.05 | 26.42 |
| | 52 | 1441 | Henry H. Tyson (hr.) | 21.41 | 19.47 |
| | 51 | 1442 | Anna W. Sherman | 21.41 | 19.47 |
| | 50½ | 1443 | Henry Whitehouse | 21.41 | 19.47 |
| | 50 | 1444 | Wm. D. Murphy | 21.41 | 19.47 |

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|---|---|---|---|---|
| 48 | 1445 | Aemone Mfg. Co. | 57.01 | 51.84 |
| 25 | 1446 | Harry Parker | 22.11 | 20.10 |
| 26 | 1447 | N. Y. C. & H. R. R. R. Co. | 185.19 | 168.40 |
| 47 | 1448 | Albert Cordes | 27.84 | 25.32 |
| 46 | 1449 | Excelsior Estates Co. | 33.15 | 30.15 |
| 30 | 1451 | N. Y. Central R. R. | 159.13 | 144.71 |
| 33 | 1452 | " " " " " | 329.67 | 299.79 |
| 283 21 | 1453 | " " " " " | 572.00 | 520.15 |
| 30 | 1454 | " " " " " | 159.13 | 144.71 |
| 34 | 1455 | " " " " " | 329.67 | 299.79 |
| 282 21 | 1456 | " " " " " | 1,060.88 | 964.72 |
| 204 1 | 1458 | " " " " " | 1,074.15 | 976.79 |
| 203 1 | 1459 | " " " " " | 1,074.15 | 976.79 |
| 202 1 | 1460 | N. Y. State Rlty. & Terminal Co. | 1,074.15 | 976.79 |
| 201 1 | 1461 | " " " " " " " | 344.79 | 313.54 |
| 6 | 1462 | " " " " " " " | 729.36 | 663.25 |
| 204 20 | 1463 | Bible Teachers Tr. School | 67.95 | 61.79 |
| 54 | 1464 | City of New York | 56.92 | 51.76 |
| 22 | 1465 | Bible Teachers Tr. School | 24.86 | 22.60 |
| 52 | 1466 | " " " " | 27.84 | 25.32 |
| 51 | 1467 | " " " " | 23.92 | 21.75 |
| 23 | 1468 | " " " " | 24.86 | 22.60 |
| 50 | 1469 | " " " " | 23.92 | 21.75 |
| 49 | 1470 | " " " " | 26.52 | 24.12 |
| 23½ | 1471 | Jas. Nugent Est. | 24.86 | 22.60 |
| 24 | 1472 | Bible Teachers Tr. School | 24.86 | 22.60 |
| 25 | 1473 | Genevieve A. Stryker | 24.86 | 22.60 |
| 47 | 1474 | Swedish Evang. Bethesda Ch. | 53.04 | 48.23 |
| 46½ | 1475 | St. Patricks Cathedral | 26.52 | 24.12 |
| 46 | 1475a | " " " | 26.52 | 24.12 |
| 26 | 1476 | Frankie Johnson Roe | 75.05 | 68.25 |
| 45 | 1477 | Jas. Kyle Est. | 26.52 | 24.12 |
| 28 | 1478 | Theresa B. Gloster | 24.39 | 22.18 |
| 29 | 1479 | Jas. L. McGovern | 26.52 | 24.12 |
| 44 | 1480 | R. Lester Hayes Est. | 33.15 | 30.15 |
| 43 | 1481 | Mary Lyons | 36.46 | 33.16 |
| 30 | 1482 | Jas. L. McGovern | 26.52 | 24.12 |
| 30½ | 1483 | " " " | 26.52 | 24.12 |
| 42 | 1484 | Frank W. Mosker | 26.52 | 24.12 |
| 31 | 1485 | Geo. E. Stuckey | 26.52 | 24.12 |
| 32 | 1486 | Lawrence L. Cassidy | 26.52 | 24.12 |
| 41 | 1487 | Hy. Kress Newton | 36.46 | 33.16 |
| 33½ | 1488 | Lawrence L. Cassidy | 26.52 | 24.12 |
| 40 | 1489 | Wm. H. Redman Est. | 26.96 | 24.52 |

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| | | | | | |
|---|---|---|---|---|---|
| | 39 | 1489a | Oliver J. Gilman | 26.41 | 24.02 |
| | 38½ | 1490 | Peter A. H. Jackson Est. | 26.41 | 24.02 |
| | 38 | 1490a | Jos. Ernst | 26.41 | 24.02 |
| | 37 | 1491 | Mary A. Cate Est. | 26.41 | 24.02 |
| | 33 | 1491a | Leopold Hellinger | 106.07 | 96.46 |
| 1303 | 20 | 1492 | Patk. McKeogh | 18.49 | 16.81 |
| | 21 | 1492a | Shelton Holding Corpn. | 18.86 | 17.15 |
| | 22 | 1493 | Kulze Bros. | 18.49 | 16.81 |
| | 25 | 1493a | Marcus Kramer | 14.70 | 13.37 |
| | 26 | 1494 | " " | 39.00 | 35.46 |
| | 27 | 1494a | Anna S. Finck | 33.15 | 30.15 |
| | 28 | 1495 | Casper Protzmann | 33.15 | 30.15 |
| | 29 | 1495a | Marcus Kramer | 33.15 | 30.15 |
| 209 | 30 | 1496 | Anna M. Pinckney | 33.15 | 30.15 |
| | 31 | 1496a | Mary Lyons | 33.15 | 30.15 |
| | 32 | 1497 | Howard W. Charles | 33.15 | 30.15 |
| | 32½ | 1497a | Cassidy Rlty. Corp. | 25.20 | 22.92 |
| | 33 | 1498 | Sarah J. Lynch | 25.18 | 22.92 |
| | 34 | 1498a | Nellie P. B. Hance | 18.91 | 17.20 |
| | 34½ | 1499 | Gibson Putzel | 18.91 | 17.20 |
| | 35 | 1499a | Chas. Cahn | 18.91 | 17.20 |
| | 36 | 1500 | Dora A. Williams | 18.91 | 17.20 |
| | 37 | 1500a | Amanda Falikee | 26.41 | 24.02 |
| | 38 | 1501 | " " | 26.96 | 24.52 |
| | 38½ | 1501a | Dora A. Williams | 16.16 | 14.70 |
| | 39 | 1502 | David L. Durra | 15.53 | 14.12 |
| | 40 | 1502a | Eliz. C. Carroll | 15.85 | 14.41 |
| | 40½ | 1503 | Wm. Holiner | 15.85 | 14.41 |
| | 40¼ | 1503a | Clara Frank | 15.85 | 14.41 |
| 210 | 41 | 1504 | Boston Holdg. Corp. | 33.15 | 30.15 |
| | 42 | 1504a | " " " | 33.15 | 30.15 |
| | 43 | 1505 | " " " | 33.15 | 30.15 |
| | 45 | 1505a | Mitchell B. Bernstein | 66.30 | 60.29 |
| | 46 | 1506 | Anna W. Hilyard | 30.49 | 23.73 |
| | 47 | 1506a | " " " | 35.81 | 32.56 |
| | 53 | 1507 | Shelton Holding Corp. | 314.59 | 286.07 |
| 1302 | 21 | 1508 | Sali Simonson | 29.40 | 26.74 |
| | 21½ | 1508a | " " | 23.42 | 21.30 |
| | 22 | 1509 | Chas. F. Pond | 17.96 | 16.33 |
| | 23 | 1509a | Sophy P. Rogensburg | 17.96 | 16.33 |
| | 23½ | 1510 | Geo. A. Lavelle | 16.90 | 15.37 |
| | 24 | 1510a | Jean Michel | 26.52 | 24.12 |
| | 25 | 1511 | Eliz. H. Haas | 26.52 | 24.12 |
| | 25½ | 1511a | Terence J. Lynch | 23.20 | 21.10 |

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|---|---|---|---|---|
| 27 | 1512a | Annie T. Conley | 23.20 | 21.10 |
| 26 | 1512 | Terence J. Lynch | 22.11 | 20.10 |
| 27½ | 1513 | Geo. W. Bogart | 22.11 | 20.10 |
| 28 | 1513a | Cornelius J. Gallagher | 22.11 | 20.10 |
| 29 | 1514 | Andrew Sheridan | 22.11 | 20.10 |
| 29½ | 1514a | Richard Deeves & Son | 22.11 | 20.10 |
| 30 | 1515 | Wm. H. Tyler | 22.11 | 20.10 |
| 31 | 1515a | Alice B. Oppenheimer | 23.20 | 21.10 |
| 31½ | 1516 | " " " | 23.20 | 21.10 |
| 32 | 1516a | " " " | 23.20 | 21.10 |
| 32½ | 1517 | " " " | 23.20 | 21.10 |
| 33 | 1517a | " " " | 25.16 | 22.82 |
| 34 | 1518 | " " " | 24.76 | 22.52 |
| 35 | 1518a | " " " | 24.76 | 22.52 |
| 36 | 1519 | " " " | 24.76 | 22.52 |
| 37 | 1519a | " " " | 24.76 | 22.52 |
| 38 | 1520 | " " " | 24.76 | 22.52 |
| 39 | 1520a | " " " | 24.76 | 22.52 |
| 40 | 1521 | " " " | 25.16 | 22.88 |
| 41 | 1521a | " " " | 23.20 | 21.10 |
| 41½ | 1522 | " " " | 23.20 | 21.10 |
| 42 | 1522a | " " " | 23.20 | 21.10 |
| 42½ | 1523 | " " " | 23.20 | 21.10 |
| 43 | 1523a | Geo. G. Kip | 26.52 | 24.12 |
| 44 | 1524 | " " " | 26.52 | 24.12 |
| 45 | 1524a | " " " | 26.52 | 24.12 |
| 45½ | 1525 | " " " | 26.52 | 24.12 |
| 46 | 1525a | " " " | 27.18 | 24.72 |
| 47 | 1526 | Louis Sandberg | 43.22 | 39.30 |
| 48 | 1526a | Wm. Wetstein | 47.72 | 43.39 |
| 49 | 1527 | Jos. L. Buttenweiser | 47.72 | 43.39 |
| 50 | 1527a | " " " | 47.72 | 43.39 |
| 51 | 1528 | " " " | 45.08 | 40.99 |
| 20 | 1528a | Sali Simonson | 26.96 | 24.52 |
| 1301 50 | 1529 | Ferdinand T. Hopkins | 22.90 | 20.82 |
| 51 | 1529a | Eliz. A. Murtagh | 22.45 | 20.42 |
| 51½ | 1530 | Acton T. Civill | 22.45 | 20.42 |
| 52 | 1531 | Ferdinand T. Hopkins | 22.45 | 20.42 |
| 53 | 1532 | " " " | 22.45 | 20.42 |
| 23 | 1533 | E. & R. Rlty. Co. | 53.04 | 48.23 |
| 21 | 1534 | Pennsylvania Cement Co. | 26.52 | 24.12 |
| 20 | 1535 | Jane E. Barney | 26.52 | 24.12 |
| 20½ | 1536 | Robt. A. Van Wyck | 26.52 | 24.12 |
| 24 | 1537 | Stanley S. Covert | 26.52 | 24.12 |
| 25 | 1538 | Jacob Gladke | 22.11 | 20.10 |

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| | | | | | |
|---|---|---|---|---|---|
| | 25½ | 1539 | Jno. F. Whelan | 22.11 | 20.10 |
| | 26 | 1540 | Martin Downey | 22.11 | 20.10 |
| | 27 | 1541 | " " | 22.11 | 20.10 |
| | 27½ | 1542 | Maria Hammond | 22.11 | 20.10 |
| | 28 | 1543 | Margaret L. Livingston | 22.11 | 20.10 |
| | 29 | 1544 | Claude L. Goverand | 22.11 | 20.10 |
| | 29½ | 1545 | Edmund Coffin | 22.11 | 20.10 |
| | 30 | 1546 | Margt. Ochs | 22.11 | 20.10 |
| | 31 | 1547 | Paul T. Kammerer | 22.11 | 20.10 |
| | 31½ | 1548 | Frank J. Digan | 22.11 | 20.10 |
| | 32 | 1549 | Helen D. Ryan | 22.11 | 20.10 |
| | 49½ | 1550 | John G. Nugent | 26.52 | 24.12 |
| | 49 | 1551 | J. G. " | 26.52 | 24.12 |
| 215 | 48 | 1552 | Abr. Poole | 26.52 | 24.12 |
| | 47 | 1553 | Audrey Elliott | 26.52 | 24.12 |
| | 46½ | 1554 | Rose Lorenz | 23.86 | 21.70 |
| | 46 | 1555 | Henrietta Granberry | 23.86 | 21.70 |
| | 45 | 1556 | Annie Pferrmann | 23.86 | 21.70 |
| | 45½ | 1557 | J. F. Maxwell | 23.86 | 21.70 |
| | 44 | 1558 | J. S. Barclay | 22.54 | 20.50 |
| | 43 | 1559 | Lewis Williams | 22.54 | 20.50 |
| | 42½ | 1560 | J. S. Corning | 22.54 | 20.50 |
| | 42 | 1561 | " " " | 22.54 | 20.50 |
| | 41 | 1562 | Nich. Betjeman | 26.52 | 24.12 |
| | 40½ | 1563 | " " | 25.20 | 22.92 |
| | 40¼ | 1564 | " " | 25.20 | 22.92 |
| | 40 | 1565 | " " | 19.12 | 17.39 |
| | 39 | 1566 | " " | 18.82 | 17.11 |
| | 38 | 1567 | " " | 18.82 | 17.11 |
| 216 | 37 | 1568 | " " | 18.82 | 17.11 |
| | 36 | 1569 | Winthrop McKim | 33.02 | 30.03 |
| | 35 | 1570 | " " | 33.02 | 30.03 |
| | 34 | 1571 | " " | 33.02 | 30.03 |
| | 33 | 1572 | " " | 33.56 | 30.52 |
| 1323 | 47 | 1573 | Newbold Edgar | 15.85 | 14.41 |
| | 48 | 1574 | Isabel Hoffman | 15.85 | 14.41 |
| | 48½ | 1575 | R. H. Lathin Est. | 15.85 | 14.41 |
| | 49 | 1576 | Robt. Main | 24.96 | 22.70 |
| | 50 | 1577 | Anita Morrell | 24.96 | 22.70 |
| | 3 | 1578 | " " | 49.92 | 45.40 |
| | 1 | 1579 | Mary Cassidy | 76.54 | 69.60 |
| | 46½ | 1580 | F. W. Mosher | 11.88 | 10.80 |
| | 46¼ | 1581 | " " " | 11.88 | 10.80 |
| | 46 | 1582 | Robt. Goelet Est. | 16.04 | 14.59 |
| | 45 | 1583 | Henrietta Rosenblatt | 19.81 | 18.01 |

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| | | | | | | |
|---|---|---|---|---|---|---|
| | 7 | 1584 | G. A. Haggerty | 85.70 | 77.93 | |
| | 44 | 1585 | J. W. Beekman Est. | 16.83 | 15.30 | |
| | 8 | 1586 | Ellen Hennessy | 106.44 | 96.79 | |
| | 43½ | 1587 | J. W. Beekman Est. | 16.16 | 14.70 | |
| | 43 | 1588 | " " " " | 16.29 | 14.81 | |
| | 42 | 1589 | Elaine Nelson | 16.73 | 15.21 | |
| | 41½ | 1590 | Mary Gleason | 17.18 | 15.62 | |
| | 41 | 1591 | Delia Collins | 17.63 | 16.03 | |
| | 40½ | 1592 | Henrietta Eiditersheimer | 18.08 | 16.44 | |
| | 40 | 1593 | Joseph Grogan | 18.53 | 16.85 | |
| | 39 | 1594 | Sali Simonson | 30.55 | 27.78 | |
| | 38 | 1595 | " " | 31.76 | 28.88 | |
| | 36 | 1596 | Jennie Shalek | 66.23 | 60.23 | |
| | 35 | 1597 | Louis Corlin | 27.58 | 25.08 | 218 |
| | 34 | 1598 | Benedetto Cangrande | 60.55 | 55.06 | |
| | 32 | 1599 | Ray Isaacs | 49.72 | 45.21 | |
| | 30 | 1600 | Morris Jacoby | 66.29 | 60.28 | |
| 1323 | 29¼ | 1601 | Augusta Knoepke | 26.52 | 24.12 | |
| | 9 | 1602 | Ellen Hennessy | 18.03 | 16.40 | |
| | 9½ | 1603 | Swedish Lutheran Church of Gustavus Adolphus | 19.06 | 17.33 | |
| | 10 | 1604 | Eliz. M. Devin | 18.03 | 16.40 | |
| | 11 | 1605 | S. E. Davenport | 19.06 | 17.33 | |
| | 12 | 1606 | Ellen Hennessy | 18.03 | 16.40 | |
| | 12½ | 1607 | Ottilie Kremer | 25.32 | 23.02 | |
| | 13 | 1608 | Susan Baker | 24.70 | 22.46 | |
| | 14 | 1609 | Edw. Story | 24.07 | 21.89 | |
| | 15 | 1610 | Josephine Hogan | 23.86 | 21.70 | |
| | 15½ | 1611 | Bible Teachers Training Sch. | 23.86 | 21.70 | 219 |
| | 16 | 1612 | " " " " | 23.86 | 21.70 | |
| | 17 | 1613 | " " " " | 23.86 | 21.70 | |
| | 18 | 1614 | Josephine Hogan | 23.86 | 21.70 | |
| | 18½ | 1615 | Mich'l Cosgrove | 23.86 | 21.70 | |
| | 19 | 1616 | Cassidy Rlty. Co. | 23.86 | 21.70 | |
| | 20 | 1617 | " " " | 23.86 | 21.70 | |
| | 20½ | 1618 | Sarah McGleenan | 23.86 | 21.70 | |
| | 21 | 1619 | J. A. Murphy | 23.86 | 21.70 | |
| | 21½ | 1620 | Cath. Hayes | 23.86 | 21.70 | |
| | 22A | 1621 | Rosalie Apple Est. | 13.54 | 12.31 | |
| | 29½ | 1622 | " " " | 11.70 | 10.64 | |
| | 29 | 1623 | Augusta Knoepke | 18.23 | 16.58 | |
| | 28½ | 1624 | " " | 16.99 | 15.45 | |
| | 28 | 1625 | Fannie Schein | 22.50 | 20.46 | |
| 1323 | 27 | 1626 | Celia Lent | 22.50 | 20.46 | |
| | 26 | 1627 | Gus Gross | 22.50 | 20.46 | |

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| | | | | | |
|---|---|---|---|---|---|
| | 25 | 1628 | Rebecca Topper | 22.50 | 20.46 |
| | 24 | 1629 | Emelia Lentz Est. | 22.50 | 20.46 |
| | 23 | 1630 | Abr. Salomon | 11.80 | 10.73 |
| | 22½ | 1631 | " " | 11.80 | 10.73 |
| | 22 | 1632 | " " | 15.71 | 14.29 |
| 1322 | 46 | 1633 | Jas. Adrian Est. | 33.02 | 30.03 |
| | 47 | 1634 | E. H. Nordlinger | 48.86 | 44.43 |
| | 48 | 1635 | Richard Relsei Son | 51.50 | 46.83 |
| | 4 | 1636 | E. A. Cruiksbank | 32.24 | 29.32 |
| | 3 | 1637 | Emily Ackerman | 33.02 | 30.03 |
| | 2 | 1638 | Anita Norrell | 33.02 | 30.03 |
| | 1 | 1639 | F. W. Mosher | 33.56 | 30.52 |
| | 5 | 1640 | German Kahn | 36.33 | 33.04 |
| 221 | 45 | 1641 | Josephine Herman | 23.89 | 21.72 |
| | 6 | 1642 | German Kahn | 37.58 | 34.17 |
| | 44 | 1643 | Agnes Gorman | 20.47 | 18.61 |
| | 7 | 1644 | Tim Murphy | 22.70 | 20.64 |
| | 43½ | 1645 | Marg't N. Patrick | 25.93 | 23.58 |
| | 7½ | 1646 | Ellen Cahill | 22.03 | 20.03 |
| | 43 | 1647 | Francis Duffy | 26.52 | 24.12 |
| | 8 | 1648 | A. C. Crump | 22.03 | 20.03 |
| | 42 | 1649 | Margt Larney | 27.84 | 25.32 |
| | 9 | 1650 | F. M. London | 22.08 | 20.03 |
| | 41½ | 1651 | Sam'l Harris | 27.84 | 25.32 |
| | 9½ | 1652 | Dorcas Boardman | 16.83 | 15.30 |
| | 10 | 1653 | Lillian Fox | 16.83 | 15.30 |
| | 41 | 1654 | Church of St. Boniface | 27.84 | 25.32 |
| | 11 | 1655 | Eva Hirsch | 26.52 | 24.12 |
| | 40 | 1656 | Rose Guntzer | 27.84 | 25.32 |
| 222 | 12 | 1657 | R. B. Burton Est. | 18.30 | 16.64 |
| | 39 | 1658 | Maybelle Titus | 27.84 | 25.32 |
| | 12½ | 1659 | W. R. Hobson | 18.30 | 16.64 |
| | 13 | 1660 | Turtle Bay Hldg. Co. | 33.15 | 30.15 |
| | 37 | 1661 | " " " " | 50.38 | 45.81 |
| | 14 | 1662 | " " " " | 26.52 | 24.12 |
| | 36½ | 1663 | " " " " | 25.20 | 22.92 |
| | 15 | 1664 | Herbert Parsons | 26.52 | 24.12 |
| | 36 | 1665 | Turtle Bay Hldg. Co. | 26.52 | 22.96 |
| | 15½ | 1666 | Mabel Churchill | 26.52 | 24.12 |
| | 35 | 1667 | Fannie Little | 25.20 | 22.96 |
| | 16 | 1668 | Margt. Poole | 26.52 | 24.12 |
| | 34 | 1669 | Marie Chapin | 25.20 | 22.92 |
| | 17 | 1670 | Mary Potter | 26.52 | 24.12 |
| | 33½ | 1671 | F. C. Farley | 25.20 | 22.92 |
| | 18 | 1672 | H. D. Roeder, Inc. | 26.52 | 24.12 |

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|---|---|---|---|---|
| 33 | 1673 | Julia Kennedy | 25.20 | 22.92 |
| 19 | 1674 | Turtle Bay Hldg. Co. | 26.52 | 24.12 |
| 32½ | 1675 | Juliet Rublee | 25.20 | 22.92 |
| 19½ | 1676 | Marian Haskins | 26.52 | 24.12 |
| 32 | 1677 | Maud Smith | 25.20 | 22.92 |
| 20 | 1678 | Helen Lefferts | 26.52 | 24.12 |
| 31 | 1679 | T. T. Hopper | 25.20 | 22.92 |
| 21 | 1680 | Eliz. Cushing | 26.52 | 24.12 |
| 30 | 1681 | St. Patrick's Cathedral | 25.20 | 22.92 |
| 21½ | 1682 | W. A. de Wattville | 26.52 | 24.12 |
| 29½ | 1683 | B. J. Paulus | 25.20 | 22.92 |
| 22 | 1684 | Jacob Ankel | 18.59 | 16.90 |
| 22½ | 1685 | Mary Carroll | 18.59 | 16.90 |
| 24 | 1686 | Raffaele Mignieia | 37.19 | 33.82 |
| 29 | 1687 | Mary Kinsella | 17.67 | 16.07 224 |
| 28¼ | 1688 | Margt Bowsky | 17.83 | 16.21 |
| 28½ | 1689 | Mary Schmid | 18.41 | 16.74 |
| 28 | 1690 | Julius Hirsch | 18.60 | 16.91 |
| 27 | 1691 | Beatrice Epstein | 20.60 | 18.73 |
| 26 | 1692 | Lena Brunner | 20.86 | 18.97 |
| 25 | 1693 | " " | 21.13 | 19.21 |
| 1321 47 | 1694 | Robt. Goelet Est. | 22.56 | 20.52 |
| 48 | 1695 | " " " | 21.21 | 19.29 |
| 49 | 1696 | " " " | 21.21 | 19.29 |
| 50 | 1697 | " " " | 27.61 | 25.11 |
| 50½ | 1698 | " " " | 27.61 | 25.11 |
| 4 | 1699 | " " " | 27.61 | 25.11 |
| 3 | 1700 | " " " | 21.21 | 19.29 |
| 2 | 1701 | " " " | 21.21 | 19.29 |
| 1 | 1702 | " " " | 22.56 | 20.52 225 |
| 4½ | 1703 | " " " | 19.58 | 17.81 |
| 46½ | 1704 | " " " | 19.58 | 17.81 |
| 46 | 1705 | Peter Alvert Est. | 25.20 | 22.92 |
| 45½ | 1706 | " " " | 26.52 | 24.12 |
| 45 | 1707 | Robt. Goelet Est. | 26.52 | 24.12 |
| 44 | 1708 | " " " | 26.52 | 24.12 |
| 43 | 1709 | " " " | 26.52 | 24.12 |
| 42 | 1710 | " " " | 26.52 | 24.12 |
| 41 | 1711 | " " " | 26.52 | 24.12 |
| 5 | 1712 | " " " | 163.08 | 148.30 |
| 10 | 1713 | John S. Murphy | 20.89 | 19.00 |
| 11 | 1714 | Morris Levin | 33.15 | 30.15 |
| 40½ | 1715 | Patrick Maloney | 17.23 | 15.67 |
| 40 | 1716 | Emma Bauer | 17.23 | 15.67 |

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| | | | | | |
|---|---|---|---|---|---|
| | 39 | 1717 | Margt. Hornidge | 24.74 | 22.50 |
| | 12 | 1718 | Eva Mangel | 33.15 | 30.15 |
| | 13 | 1719 | Wm. Schwind | 33.15 | 30.15 |
| | 38 | 1720 | Sarah Rosenbaum | 24.74 | 22.50 |
| | 37½ | 1721 | Louisa Nicolino | 24.74 | 22.50 |
| | 37 | 1722 | Nellie McCarthy | 24.74 | 22.50 |
| | 36 | 1723 | Helena Conolly | 24.74 | 22.50 |
| | 14 | 1724 | Patk. Walsh Est. | 13.28 | 12.08 |
| | 14½ | 1725 | " " " | 13.28 | 12.08 |
| | 15 | 1726 | Benj. Brettler | 25.60 | 23.28 |
| | 35 | 1727 | Marie Blodgett | 24.74 | 22.50 |
| | 16 | 1728 | Ellen T. Curry | 22.45 | 20.42 |
| | 34½ | 1729 | May Craigmile | 24.74 | 22.50 |
| 227 | 17 | 1730 | Flintlock Rlty. Co. | 135.87 | 123.55 |
| | 34 | 1731 | Monongahela de Beanjean | 24.74 | 22.50 |
| | 633 | 1732 | Josephine Pert | 24.74 | 22.50 |
| | 32 | 1733 | Eliz. Cooper | 24.74 | 22.50 |
| | 31½ | 1734 | Levi Hirschfield | 24.74 | 22.50 |
| | 31 | 1735 | Louise Dickson | 24.74 | 22.50 |
| | 30 | 1736 | Georgette Tighe | 24.74 | 22.50 |
| | 29½ | 1737 | Fannie Hoadley | 24.74 | 22.50 |
| | 29¼ | 1738 | Herman Drebes | 25.42 | 23.12 |
| | 29 | 1739 | Tim. Tobin | 19.72 | 17.93 |
| | 28 | 1740 | Eliz. McMahon | 18.05 | 16.41 |
| | 27 | 1741 | Nancy Rosenthal | 18.51 | 16.83 |
| | 26½ | 1742 | Annie Mauer | 17.97 | 16.34 |
| | 26 | 1743 | S. J. Weinberg | 17.97 | 16.34 |
| | 25 | 1744 | Flintlock Rlty. Co. | 131.74 | 119.80 |
| | 23 | 1745 | " " " | 30.98 | 28.17 |
| 228 | 22 | 1746 | " " " | 25.16 | 22.88 |
| 1320 | 46 | 1747 | Mich'l Breslin Est. | 31.87 | 28.98 |
| | 47 | 1748 | M. J. Jennings | 31.36 | 28.52 |
| | 48 | 1749 | W. F. Mott | 31.36 | 28.52 |
| | 49 | 1750 | Sarah O'Reiily | 31.36 | 28.52 |
| | 4 | 1751 | Rebecca Herbsman | 31.36 | 28.52 |
| | 3 | 1752 | Cath. Phelps | 31.36 | 28.52 |
| | 2 | 1753 | Rebecca Swenkin | 24.75 | 22.51 |
| | 1 | 1754 | T. J. McFarland Est. | 25.16 | 22.88 |
| | 4½ | 1755 | Kath. Schnepp | 13.31 | 12.10 |
| | 5 | 1756 | Eliz. Held Est. | 26.52 | 24.12 |
| | 45 | 1757 | Mathilda Mahr | 29.78 | 36.17 |
| | 44 | 1758 | Jno. Spannhake | 26.52 | 24.12 |
| | 7 | 1759 | Paula Wright | 233.96 | 212.75 |
| | 43 | 1760 | Jno. Michels Est. | 44.41 | 40.38 |
| | 11 | 1761 | Philip McGuire | 19.89 | 18.09 |

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|---|---|---|---|---|
| 40 | 1762 | Sarah Roome | 23.86 | 21.70 |
| 12 | 1763 | Mary Mitchell | 34.47 | 31.35 |
| 39 | 1764 | Sarah Roome | 35.81 | 32.56 |
| 13 | 1765 | Mary Mitchell | 34.47 | 31.35 |
| 38 | 1766 | W. J. Wuest | 25.20 | 22.92 |
| 14 | 1767 | Philip Bentz | 34.47 | 31.35 |
| 37½ | 1768 | W. J. Wuest | 25.20 | 22.92 |
| 15 | 1769 | Morris Markowitz | 34.47 | 31.35 |
| 37 | 1770 | Peter Curry Est. | 33.15 | 30.15 |
| 36 | 1771 | Vittoria Messines | 33.15 | 30.15 |
| 16 | 1772 | Sig. Grabenheimer | 34.47 | 31.52 |
| 35 | 1773 | Mary Anacker | 33.15 | 30.15 |
| 17 | 1774 | Donelly & Ricci Est. | 34.47 | 31.35 |
| 18 | 1775 | " " " " | 34.47 | 31.35 |
| 34 | 1776 | Mary Mindermann | 33.15 | 30.15 230 |
| 33 | 1777 | 232 E. 47th St. Corp. | 30.49 | 27.73 |
| 19 | 1778 | Coca Cola Bottling Co. of N. Y. | 34.47 | 31.35 |
| 32 | 1779 | Isaac Geringer | 30.49 | 27.73 |
| 20 | 1780 | Coca Cola Bottling Co. of N. Y. | 33.15 | 30.15 |
| 31 | 1781 | Alice O'Connell | 30.49 | 27.73 |
| 21 | 1782 | Coca Cola Bottling Co. of N. Y. | 35.81 | 32.56 |
| 30 | 1783 | Isaac Geringer | 30.49 | 27.13 |
| 29½ | 1784 | Margt. Eidt | 26.89 | 24.45 |
| 21½ | 1785 | Coca Cola Bottling Co. of N. Y. | 26.89 | 24.45 |
| 29 | 1786 | J. W. Eidt | 24.10 | 21.92 |
| 28 | 1787 | Adam Roland Est. | 24.10 | 21.92 |
| 27 | 1788 | Jacob Eidt | 24.10 | 21.92 |
| 26 | 1789 | Marne Rlty. Co. | 33.02 | 30.03 |
| 25 | 1790 | Chas. Laeffler | 33.02 | 30.03 |
| 24 | 1791 | Jacob Eidt | 24.48 | 22.26 231 |
| 23 | 1792 | Michaele Manafino | 24.10 | 21.92 |
| 22 | 1793 | Davey Rlty Co. | 24.10 | 21.92 |
| 1281 69 | 1794 | Ophelia Byrne | 37.77 | 34.35 |
| 70 | 1795 | J. J. Hall Est. | 37.14 | 33.77 |
| 71 | 1796 | Robt. Eble | 44.57 | 40.53 |
| 72 | 1797 | Anna Lamont Est. | 44.57 | 40.53 |
| 4 | 1798 | O. S. J. Realty Co. | 25.00 | 22.73 |
| 3 | 1799 | Ch. of Heavenly Rest | 180.33 | 163.98 |
| 2 | 1800 | T. T. Eckert, Jr. | 30.01 | 27.29 |
| 1 | 1801 | Gladys B. Thayer (hr) | 72.43 | 65.86 |
| 6 | 1802 | Ch. of Heavenly Rest | 46.92 | 42.67 |
| 68 | 1803 | Shops, Inc., | 44.76 | 40.70 |
| 66 | 1804 | Chas. A. Coe Est. | 44.76 | 40.70 |
| 7 | 1805 | Jeanne V. O. McKane | 59.66 | 54.25 |

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|---|---|---|---|---|---|
| | 65 | 1806 | Mary E. Pinchot Est. | 60.66 | 55.16 |
| | 8 | 1807 | Lefferts Strebeigh | 59.66 | 54.25 |
| | 64 | 1808 | Jennie E. Van Brunt (hr) | 36.30 | 33.01 |
| | 9 | 1809 | Geo. Kremer | 59.66 | 54.25 |
| | 10 | 1810 | 45th & 46th St. Corp'n | 178.99 | 162.77 |
| | 62 | 1810a | Sawyer's Rlty. Co. | 74.59 | 67.83 |
| | 61 | 1811 | Emanuel Schman Est. | 37.29 | 33.91 |
| | 13 | 1812 | 45th & 46th St, Corp. | 47.73 | 43.40 |
| | 60 | 1813 | Robt. W. Goelet | 29.83 | 27.13 |
| | 17 | 1814 | Henry Phipps Est. Corp'n | 246.12 | 223.81 |
| | 59 | 1815 | Anna S. Pedersen. Geo. T. Stevens Est. | 59.66 | 54.25 |
| | 56 | 1816 | Henry Phipps Est. Corp'n | 98.45 | 89.53 |
| 1279 | 69 | 1817 | Matthews Byrnes Est. | 343.43 | 312.30 |
| | 72 | 1818 | Stella M. Rothschild | 111.43 | 101.33 |
| 23 | 4 | 1819 | Delco Rlty. Corp'n | 111.43 | 101.33 |
| | 1 | 1820 | " " " | 458.68 | 417.10 |
| | 6 | 1821 | 3 & 5 E. 44th St., Inc. | 112.78 | 102.56 |
| | 66 | 1822 | " " " | 59.66 | 54.25 |
| | 7 | 1823 | " " " | 112.78 | 102.56 |
| | 9 | 1824 | Farmers Loan & T. Co. | 112.78 | 102.56 |
| | 65 | 1825 | Julia M. Schieffelin Est. | 59.66 | 54.25 |
| | 64 | 1826 | Arthur S. Vernay | 59.66 | 54.25 |
| | 10 | 1827 | Farmers Loan & T. Co. | 112.78 | 102.56 |
| | 63 | 1828 | Arthur S. Vernay | 47.73 | 43.40 |
| | 11 | 1829 | Farmers Loan & T. Co. | 112.78 | 102.56 |
| | 59 | 1830 | Bordon Rlty. Corpn. | 290.87 | 264.50 |
| | 12 | 1831 | Sam'l P. Colt | 69.60 | 63.29 |
| | 17 | 1832 | Riverbrook Realty Co. | 502.15 | 456.63 |
| | 58 | 1833 | Oceanic Investing Co. | 60.49 | 55.01 |
| 234 | 57 | 1834 | " " " | 96.36 | 87.63 |
| | 17½ | 1835 | Peter A. H. Jackson Est. | 77.63 | 70.59 |
| 1279 | 48 | 1836 | Anahma Rlty. Corp'n | 479.16 | 435.73 |
| | 45 | 1837 | N. Y. Central R. R. Co. | 292.94 | 266.39 |
| | 23 | 1838 | Schmitt Rlty. Corp'n | 222.85 | 202.65 |
| | 28 | 1839 | N. Y. Central R. R. Co. | 383.20 | 348.47 |
| | 24 | 1840 | Chas. A. Dards | 113.30 | 103.03 |
| | 25 | 1841 | " " " | 104.00 | 94.57 |
| 1278 | 68 | 1842 | Highbrighton Rlty. Corp'n | 331.46 | 301.42 |
| | 67 | 1843 | Wetzel Bldg. Co. | 179.33 | 163.07 |
| | 65 | 1844 | Pneumatic Tool R'lty Corpn. | 208.87 | 189.94 |
| | 64 | 1845 | Henry Phipps Est. Corp'n | 104.43 | 94.96 |
| | 63 | 1846 | Albert B. Ashforth. Inc. | 104.43 | 94.96 |
| | 62 | 1847 | Claudia B. Stone | 104.43 | 94.96 |
| | 72 | 1848 | 523 Fifth Ave. Rlty. Corp'n | 172.96 | 157.28 |
| | 1 | 1849 | Temple Emanuel | 1,162.82 | 1,057.42 |

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|---|---|---|---|---|---|
| | 8 | 1850 | Henry Phipps Est. Corp'n | 338.09 | 307.44 |
| | 14 | 1851 | Madison Ave. Officers, Inc. | 1,492.02 | 1,356.78 |
| | 17 | 1852 | Pease & Elliman | 141.14 | 128.35 |
| | 15 | 1853 | Sarah A. Fay | 155.25 | 141.18 |
| | 20 | 1854 | N. Y. C. & H. R. R. Co. | 2,435.18 | 2,214.45 |
| 1277 | 69 | 1855 | Postal Life Ins. Co. | 528.35 | 480.46 |
| | 72 | 1856 | Susan M. Sturges | 342.64 | 311.58 |
| | 68½ | 1857 | Postal Life Ins. Co. | 22.64 | 20.59 |
| | 68 | 1858 | Oceanic Inv. Co. | 59.66 | 54.25 |
| | 67 | 1859 | " " " | 97.16 | 88.35 |
| | 67½ | 1859a | " " " | 52.00 | 47.29 |
| | 66 | 1860 | Jeremiah Milbank | 346.05 | 314.68 |
| | 64 | 1861 | Duncan Phyfe Est. | 101.38 | 92.19 |
| | 63 | 1862 | Henry Phipps Est. | 131.22 | 119.33 |
| | 52 | 1865 | John C. Clark | 185.71 | 168.88 |
| | 51 | 1866 | " " " | 154.74 | 140.71 |
| | 50 | 1867 | Emily S. Charles | 154.74 | 140.71 |
| | 46 | 1868 | " " " | 197.90 | 179.96 |
| 1281 | 21 | 1869 | N. Y. C. R. R. Co. | 183.86 | 167.19 |
| | 24 | 1870 | " " | 1,433.70 | 1,303.74 |
| 1300 | 1 | 1871 | " " | 1,654.70 | 1,504.71 |
| 1280 | 90 | 1872 | " " | 2,219.63 | 2,018.43 |
| | 60 | 1873 | " " | 4,019.59 | 3,655.24 |
| 1300 | 50 | 1874 | Gyges Rlty. Co. | 237.71 | 216.16 |
| | 20 | 1875 | Fannie I. Helmuth Est. | 90.04 | 81.88 |
| | 21 | 1876 | Cora A. Ferguson | 37.71 | 34.29 |
| | 23 | 1877 | Catalina Paez McManus | 70.62 | 64.22 |
| | 23½ | 1878 | Christopher Musgrave | 26.35 | 23.96 |
| | 23¾ | 1879 | " J. " | 19.97 | 18.16 |
| | 24 | 1880 | Jane E. Barney | 47.73 | 43.40 |
| | 24½ | 1881 | Lucy J. Doyle | 42.95 | 39.06 |
| | 25 | 1882 | Sam'l A. Clark | 52.49 | 47.73 |
| | 47 | 1883 | Hermine Goetting | 26.85 | 24.42 |
| | 26 | 1884 | 145 E. 45th St. Corp. | 47.73 | 43.40 |
| | 46½ | 1885 | Ruth A. Williams | 22.38 | 20.35 |
| | 27 | 1886 | Marie B. Coles | 47.73 | 43.40 |
| | 46 | 1887 | Fred Schulz Co. | 25.35 | 23.05 |
| | 45½ | 1888 | Emma A. Kassing | 22.38 | 20.35 |
| | 27½ | 1889 | Edw. Gorning Co. | 47.73 | 43.40 |
| | 45 | 1890 | Prelate D. Parker | 25.35 | 23.05 |
| | 28 | 1891 | Wm. A. Blanch Est. | 47.73 | 43.40 |
| | 44 | 1892 | Rose Dunn | 22.38 | 20.35 |
| | 29 | 1893 | Edgar W. Van Vleck | 47.73 | 43.40 |
| | 43 | 1894 | Robt. J. Rosenthal | 25.35 | 23.05 |
| | 30 | 1895 | McMillon Realty Corpn. | 47.73 | 43.40 |

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|---|---|---|---|---|---|
| | 42 | 1896 | Paul T. Kammerer | 23.86 | 21.70 |
| | 31 | 1897 | Margt. A. Delaney | 47.73 | 43.40 |
| | 41 | 1898 | Phillipine Wallbott | 59.66 | 54.25 |
| | 32 | 1899 | Thes J. Edlich | 47.73 | 43.40 |
| | 40 | 1899a | John P. Gilford | 37.74 | 34.32 |
| | 39 | 1900 | Thomas B. Gilford | 37.14 | 33.77 |
| | 38 | 1901 | Thos. B. Gilford. Jr. | 44.57 | 40.53 |
| | 37 | 1902 | Sam'l T. Gilford | 44.57 | 40.53 |
| | 36 | 1903 | " " " | 55.71 | 50.66 |
| | 35 | 1904 | John P. Gilford | 55.71 | 50.66 |
| | 34 | 1905 | " " " | 66.86 | 60.80 |
| | 33 | 1906 | " " " | 67.93 | 61.77 |
| 1299 | 51 | 1907 | Edmund A. Hurry Est. | 39.00 | 35.46 |
| | 51½ | 1908 | Miami Minturn | 39.00 | 35.46 |
| 239 | 52 | 1909 | Henrietta Bohmfalk | 39.00 | 35.46 |
| | 52½ | 1910 | Teresa Quinn | 39.00 | 35.46 |
| | 48 | 1911 | Y. W. C. A. | 178.99 | 162.77 |
| | 53 | 1912 | Rose Rosenberg | 41.19 | 37.46 |
| | 54 | 1913 | Caroline A. Barry | 41.79 | 38.00 |
| | 19 | 1914 | Ca.h. W. Sanford | 56.47 | 51.35 |
| | 19½ | 1915 | James E. Tower | 58.65 | 53.33 |
| | 20 | 1916 | Edmund A. Hurry Est. | 60.81 | 55.30 |
| | 21 | 1917 | Railroad Co-Operative Bldg. & Loan Ass'n | 62.99 | 57.28 |
| | 22 | 1918 | Isabella F. Henderson | 74.88 | 68.09 |
| | 23 | 1919 | Orinoco Realty Co. | 417.66 | 379.80 |
| | 47 | 1920 | Robert Goelet Est. | 47.73 | 43.40 |
| | 46½ | 1921 | " " " | 47.73 | 43.40 |
| | 27 | 1922 | " " " | 104.41 | 94.95 |
| | 46 | 1923 | " " " | 47.73 | 53.40 |
| 240 | 28 | 1924 | " " " | 104.41 | 94.95 |
| | 45 | 1925 | " " " | 47.73 | 43.40 |
| | 29 | 1926 | " " " | 104.41 | 94.95 |
| | 44 | 1927 | " " " | 47.73 | 43.40 |
| | 42 | 1928 | Children's Aid Soc. | 89.51 | 81.40 |
| | 30 | 1929 | Ida O. Walter | 104.41 | 94.95 |
| | 31 | 1930 | " " " | 208.83 | 189.90 |
| | 41½ | 1931 | Geo. J. Schoeffel | 44.75 | 40.69 |
| | 41 | 1932 | Herman Schanzlin | 44.75 | 40.69 |
| | 40 | 1933 | Geo. Goetting Est. | 70.25 | 63.88 |
| | 39 | 1934 | Walter Longman | 75.58 | 68.73 |
| | 38 | 1935 | Morris Goldstein | 79.39 | 72.19 |
| | 37 | 1936 | Maurice V. Freund | 84.69 | 77.01 |
| | 36 | 1937. | Fredk. Wohlfert | 89.98 | 81.82 |
| | 35 | 1938 | Rebecca Wohlfert | 95.27 | 86.63 |

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|---|---|---|---|---|---|
| | 34 | 1939 | Leon Pascal | 100.55 | 91.44 |
| | 33 | 1940 | Edw. J. Murphy | 105.85 | 96.26 |
| 1298 | 50 | 1941 | Patk. J. Flannery | 72.20 | 65.66 |
| | 51 | 1942 | Randolf Hurry | 64.31 | 58.48 |
| | 52 | 1943 | Cora A. Ferguson | 62.30 | 56.65 |
| | 52¼ | 1944 | Grace Edmonds | 60.29 | 54.83 |
| | 52½ | 1945 | Myron S. Falk. Inc. | 58.28 | 53.00 |
| | 49½ | 1946 | Neelar Rlty. Co. | 56.27 | 51.17 |
| | 49 | 1947 | Chas. A. Holmes | 83.53 | 75.96 |
| | 48 | 1948 | Esther E. Gibson | 83.53 | 75.96 |
| | 47½ | 1949 | Amsterdam Bldg. Co. | 62.65 | 56.97 |
| | 47 | 1950 | Jas. F. Boyle | 62.65 | 56.97 |
| | 46½ | 1951 | Wm. H. Fiammer | 62.65 | 56.97 |
| | 46 | 1952 | Rich'd W. Lehne | 62.65 | 56.97 |
| | 53 | 1953 | Nectar Rlty. Co. | 216.32 | 196.71 |
| | 20 | 1954 | Margaret Currier | 104.17 | 94.73 |
| | 21 | 1955 | Eliza Toumey Est. | 106.71 | 97.04 |
| | 22 | 1956 | A. Z. A. R'lty Corpn. | 109.24 | 99.34 |
| | 23 | 1957 | " " " | 131.20 | 119.31 |
| | 24 | 1958 | " " " | 208.83 | 189.90 |
| | 25 | 1959 | Bernard Hughes Est. | 99.42 | 90.41 |
| | 25½ | 1960 | Chas. Connor | 99.42 | 90.41 |
| | 26 | 1961 | Alex. Malcolm | 99.42 | 90.41 |
| | 27 | 1962 | Jos. A. McAllister | 119.34 | 108.52 |
| | 27½ | 1963 | St. Agnes Church | 119.34 | 108.52 |
| | 45 | 1964 | " " " | 104.41 | 94.95 |
| | 28 | 1965 | " " " | 626.49 | 569.70 |
| | 42 | 1966 | " " " | 373.38 | 339.54 |
| | 41 | 1967 | Peter C. Gallagher | 99.88 | 90.83 |
| | 40½ | 1968 | Edwa. P. MacDonald | 56.16 | 51.07 |
| | 40 | 1969 | " " " | 49.92 | 45.40 |
| | 39 | 1970 | " " " | 49.92 | 45.40 |
| | 38 | 1971 | Lottie H. Lion | 85.57 | 77.81 |
| | 37 | 1972 | *Hieronimus Herold Est.* | 89.85 | 81.71 |
| | 36½ | 1973 | " " " | 123.31 | 112.13 |
| | 36 | 1974 | " " " | 123.31 | 112.13 |
| | 34 | 1975 | Isaac Cohen | 316.98 | 288.25 |
| | 33 | 1976 | Eliz. T. Kennedy Shippan | 164.08 | 149.21 |
| 1297 | 45 | 1978 | Robt. M. Law | 149.16 | 135.64 |
| | 43 | 1979 | " " " | 149.16 | 135.64 |
| | 41 | 1980 | Jno. C. Clark | 298.32 | 271.28 |
| | 40 | 1981 | Mary G. Wise | 185.71 | 168.88 |
| | 39 | 1982 | Lillian Boehm | 185.71 | 168.88 |
| | 38 | 1983 | Henry Pols | 185.71 | 168.88 |
| | 37 | 1984 | " " | 185.71 | 168.88 |

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|---|---|---|---|---|---|
| 1319 | 47 | 1985 | John Dunkak Est. | 29.71 | 27.02 |
| | 48 | 1986 | Abraham A. Weigert | 29.71 | 27.02 |
| | 49 | 1987 | Gaetano Tarantino | 22.11 | 20.10 |
| | 49½ | 1988 | " " | 22.11 | 20.10 |
| | 50 | 1989 | Dorothea J. Emanuel | 28.53 | 25.94 |
| | 4½ | 1990 | Isaac Teschner | 27.04 | 24.59 |
| | 4 | 1991 | Morris Frohman Est. | 20.05 | 18.23 |
| | 3 | 1992 | " " " | 21.18 | 19.26 |
| | 2 | 1993 | Leonard J. Carpenter | 22.73 | 20.67 |
| | 1 | 1994 | " " " | 24.06 | 21.88 |
| | 5½ | 1995 | " " " | 37.93 | 34.49 |
| | 5¼ | 1996 | Morris Frohman Est. | 47.73 | 43.40 |
| | 46½ | 1997 | Ella F. Lyon | 29.83 | 27.13 |
| 245 | 5 | 1998 | Florence E. Kuebele | 44.75 | 40.69 |
| | 46 | 1999 | Leopold Heymann | 22.38 | 20.35 |
| | 6 | 2000 | Minnie Teschendorff | 44.75 | 40.69 |
| | 45½ | 2001 | Jno. Anderson | 22.38 | 20.35 |
| | 6½ | 2002 | Eliza J. Ramsey | 44.75 | 40.69 |
| | 45 | 2003 | Alys J. Dabour | 22.75 | 20.69 |
| | 7 | 2004 | Maria McGuire | 44.75 | 40.69 |
| | 44 | 2005 | Anton Perminger | 22.75 | 20.69 |
| | 8 | 2006 | Mary A. Norman | 39.79 | 36.18 |
| | 43 | 2007 | Shelter for Resp. Girls | 29.98 | 21.26 |
| | 11 | 2008 | Institute of the Franciscan Missionaries of Mary | 198.87 | 180.84 |
| | 40 | 2009 | G. H. Masten Rlty. Co. | 59.87 | 54.44 |
| | 42½ | 2010 | Betty Giebel Est. | 14.76 | 13.42 |
| | 42 | 2011 | Edw. L. Godfrey | 14.67 | 13.34 |
| | 41 | 2012 | M. Gertrude Cohen | 14.76 | 13.42 |
| 246 | 40½ | 2013 | Margaret Meade | 14.67 | 13.34 |
| | 39½ | 2014 | G. H. Masten Rlty. Co. | 24.99 | 22.72 |
| | 12 | 2015 | Annie Schierenbeck Est. | 59.66 | 54.25 |
| | 13 | 2016 | Theo. Bienz | 59.66 | 54.25 |
| | 39 | 2017 | G. H. Masten Rlty. Co. | 28.72 | 26.12 |
| | 38 | 2018 | Wm. D. Chapple | 28.72 | 26.12 |
| | 37 | 2019 | Chas. S. Andrews Est. | 28.72 | 26.12 |
| | 14 | 2020 | Sarah Goldman | 55.93 | 50.86 |
| | 15 | 2021 | U. S. Trust Co. | 55.93 | 50.86 |
| | 36 | 2022 | Fredk. L. Hang | 37.29 | 33.91 |
| | 16 | 2023 | Matons Rlty. Corp. | 52.21 | 47.48 |
| | 35 | 2024 | Eliz. Stephany | 37.29 | 33.91 |
| | 34 | 2025 | Leopold Heilinger | 37.29 | 33.91 |
| | 17 | 2026 | Matons Rlty. Corp. | 52.21 | 47.48 |

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|---|---|---|---|---|
| 33 | 2027 | Kate E. Morgan | 55.93 | 50.86 |
| 18 | 2028 | Jacob Fachs | 48.48 | 44.09 |
| 19 | 2029 | Ella F. Kealy | 48.48 | 44.09 |
| 31 | 2030 | Kate E. Morgan | 55.93 | 50.86 |
| 20 | 2031 | Rachel Schwarz | 44.75 | 40.69 |
| 30 | 2032 | Phillip Schlosser | 37.29 | 33.91 |
| 21 | 2033 | Louis Thurm | 44.75 | 40.69 |
| 29½ | 2034 | Ernest Koch | 18.72 | 17.02 |
| 29 | 2035 | Mary E. Scanlon | 28.30 | 25.73 |
| 28 | 2035a | Max Levy | 27.86 | 25.33 |
| 27 | 2036 | Ernest Koch | 40.86 | 37.16 |
| 26 | 2037 | Marie L. Kern | 40.86 | 37.16 |
| 25 | 2038 | Chas. W. Eidt | 44.57 | 40.53 |
| 24 | 2039 | Thos. F. Baldwin | 44.57 | 40.53 |
| 23 | 2040 | Chas. Tarzian | 48.29 | 43.91 |
| 22½ | 2041 | Harganonsh Chutzian | 49.09 | 44.64 |
| 318 48 | 2042 | Jones Wood Realty Corp'n | 59.66 | 54.25 |
| 49 | 2043 | Terence J. Lynch | 46.92 | 42.67 |
| 49½ | 2044 | " " " | 49.16 | 44.70 |
| 50 | 2045 | Jacob Schmid | 51.39 | 46.73 |
| 51 | 2046 | " " | 53.63 | 48.77 |
| 3 | 2047 | Frank Fowler | 124.10 | 112.85 |
| 2 | 2048 | J. Edgar Leaycraft | 133.65 | 121.54 |
| 1 | 2049 | Annie V. McLaughlin | 71.67 | 65.17 |
| **5** | **2050** | **Marshall H. Runk** | 104.42 | 94.95 |
| 47 | 2051 | Eilen A. Bogart | 59.66 | 54.25 |
| 6 | 2052 | Marshall H. Runt | 78.31 | 71.21 |
| 46 | 2053 | Robt. Miemann | 59.66 | 54.25 |
| 7 | 2054 | Marshall H. Runt | 78.31 | 71.21 |
| 45 | 2055 | Augusta Haase | 59.66 | 54.25 |
| 8 | 2056 | Oren F. Browning Est. | 174.59 | 158.76 |
| 44 | 2057 | Wm. Garbet | 39.79 | 36.18 |
| 43½ | 2058 | Fred'k Brockman | 39.79 | 36.18 |
| 43 | 2059 | 214 E. 45th St. Co. | 39.79 | 36.18 |
| 9 | 2060 | Etagloc Hldg. Co. | 164.72 | 149.79 |
| 42 | 2061 | Pat'k McCauley | 59.66 | 54.25 |
| 41 | 2062 | Chas. W. Eidt | 59.66 | 54.24 |
| 11 | 2063 | Frank W. Mosher | 87.64 | 79.70 |
| 40½ | 2064 | Hetty Conway | 29.83 | 27.13 |
| 40 | 2065 | " " | 29.83 | 27.13 |
| 39 | 2066 | Jno. McGleenan | 64.44 | 58.60 |
| 12 | 2067 | Frank W. Mosher | 87.64 | 79.70 |
| 13 | 2068 | " " " | 82.04 | 74.60 |
| 14 | 2069 | Wm. Hoffman | 82.04 | 74.60 |
| 8 | 2070 | Domenica Pinella | 58.17 | 52.92 |

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250 *Final Decree (Abstract of Benefit)*

| | | | | | |
|---|---|---|---|---|---|
| | 37 | 2071 | Carrie Reinhardt | 60.41 | 54.93 |
| | 36 | 2072 | Johanna Cbose | 75.40 | 68.57 |
| | 15 | 2073 | Emile Baumgarten | 152.89 | 139.03 |
| | 17 | 2074 | Wm. Proswitz | 56.68 | 51.54 |
| | 35 | 2075 | J. Chr. G. Hupfel Brewing Co. | 33.00 | 30.01 |
| | 18 | 2076 | Grassi Plastering Co. | 110.94 | 100.88 |
| | 34 | 2077 | Wm. F. Harnett | 32.36 | 29.43 |
| | 33 | 2078 | Zachary T. Emerson | 37.39 | 34.00 |
| | 19 | 2079 | Hy. B. Twormbley | 75.56 | 68.71 |
| | 20 | 2080 | Jacobson & Co. | 66.75 | 60.70 |
| | 31 | 2081 | Harry Aronson | 89.50 | 81.39 |
| | 21 | 2082 | Frieda Lavery | 45.78 | 41.63 |
| | 21½ | 2083 | Jos. Sountag | 33.99 | 30.91 |
| 251 | 22 | 2084 | Children's Aid Society | 190.84 | 173.54 |
| | 30½ | 2085 | Caroline W. Heinburg | 22.46 | 20.42 |
| | 30 | 2086 | Ernest A. Hoaren | 39.63 | 36.04 |
| | 29 | 2087 | Albert Hochster | 39.00 | 35.46 |
| | 28 | 2088 | Chas. Lutz Est. | 52.93 | 48.13 |
| | 27 | 2089 | Augusta Haase | 54.38 | 49.45 |
| | 26 | 2090 | Seloin Rlty. Co. | 57.84 | 52.60 |
| 1317 | 45 | 2091 | Alfred B. Robinson | 77.60 | 70.57 |
| | 46 | 2092 | Wm. H. Whiting | 76.06 | 69.17 |
| | 46½ | 2093 | Anna H. Reubel | 85.57 | 77.81 |
| | 47 | 2094 | " " " | 85.57 | 77.81 |
| | 48 | 2095 | Hanlea Rlty. Co. | 95.08 | 86.46 |
| | 4 | 2096 | Isaac C. Delaplaine | 95.08 | 86.46 |
| | 3 | 2097 | John H. Henshaw | 202.06 | 183.74 |
| | 2 | 2098 | Michael Haggerty | 102.22 | 92.95 |
| | 1 | 2099 | Cord Steffens | 104.59 | 95.11 |
| 252 | 41½ | 2100 | Mary C. Devine Est. | 149.16 | 135.64 |
| | 44½ | 2101 | Ada K. Reid | 104.42 | 94.95 |
| | 44 | 2102 | Jos. W. Clausen | 104.42 | 94.95 |
| | 5 | 2103 | Wm. J. Quinn | 149.16 | 135.64 |
| | 43 | 2104 | Marne Rlty. Corp. | 98.82 | 89.86 |
| | 6 | 2105 | H. P. Wright | 141.71 | 128.86 |
| | 42 | 2106 | Edw. W. Daly | 98.82 | 89.86 |
| | 7 | 2107 | Eliz. G. Schmid | 141.71 | 128.86 |
| | 41 | 2108 | Harry Samson | 93.23 | 84.78 |
| | 8 | 2109 | Eliz. G. Schmid | 134.25 | 122.08 |
| | 40 | 2110 | Marne Rlty. Corp'n | 93.23 | 84.78 |
| | 9 | 2111 | Am. Railway Exp. Co. | 134.25 | 122.08 |
| | 37 | 2112 | " " " " | 257.30 | 233.98 |
| | 10 | 2113 | " " " " | 126.79 | 115.30 |
| | 11 | 2114 | " " " " | 635.81 | 578.18 |
| | 15 | 2115 | Edw. C. Somner | 125.29 | 113.93 |

| | | | | |
|---|---|---|---|---|
| 30 | 2116 | Emilie Baumgarten | 361.43 | 328.67 |
| 16 | 2117 | Jno. C. Eidt | 116.15 | 105.62 |
| 17 | 2118 | Wm. Roth | 116.48 | 105.92 |
| 19 | 2119 | Commodore Rlty. Co. | 193.94 | 176.36 |
| 29 | 2120 | Rena P. Marshall | 59.66 | 54.25 |
| 20 | 2121 | " " " | 75.52 | 68.67 |
| 28½ | 2122 | E. M. R. Land Co. | 41.21 | 37.47 |
| 20½ | 2123 | Rena P. Marshall | 71.59 | 65.10 |
| 28 | 2124 | Eva Rosenstock Est. | 45.76 | 41.61 |
| 27½ | 2125 | Rose T. Tuthill | 42.33 | 38.49 |
| 27 | 2126 | Sam'l Howe | 44.44 | 40.41 |
| 26 | 2127 | Jacob Klein | 44.44 | 40.41 |
| 25 | 2128 | Abe J. Dworsky | 81.71 | 74.30 |
| 24 | 2129 | Jacob Schaefer | 68.61 | 62.39 |
| 23 | 2130 | Mary F. Angell | 68.61 | 62.39 |
| 22 | 2131 | " " " | 71.59 | 65.10 |
| 21 | 2132 | Morris Silverman | 71.59 | 65.10 |
| 1316 47 | 2133 | Wm. Delaney | 121.23 | 110.24 |
| 48 | 2134 | Christine Schnittzer | 118.86 | 108.09 |
| 48½ | 2135 | Edw. Farrell | 118.86 | 108.09 |
| 49 | 2136 | Geo. W. Pell Est. | 118.86 | 108.09 |
| 50 | 2137 | " " " " | 118.86 | 108.09 |
| 46½ | 2138 | John J. Murphy | 149.16 | 135.64 |
| 43 | 2139 | Marg't A. Claffy | 566.82 | 515.44 |
| 35 | 2141 | Matthias Goetz | 104.41 | 94.95 |
| 34 | 2142 | Crescent Star Rlty. Co. | 104.41 | 94.95 |
| 31 | 2143 | Albt. Gerstendorfer | 372.91 | 339.11 |
| 30 | 2144 | Marg't O'Connell | 67.12 | 61.04 |
| 29 | 2145 | Irving Wortmann | 67.12 | 61.04 |
| 28½ | 2146 | Max Wortmann | 67.12 | 61.04 |
| 28 | 2147 | Wm. Ursprung | 67.12 | 61.04 |
| 27 | 2148 | Martin Yung Est. | 67.12 | 61.04 |
| | | Total | | $1,014,905.52 |

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**Dated, New York, March 1st, 1932.**

**Phoenix Ingraham, Justice of the Supreme Court of the State of New York.**

**Dated, New York, May 7, 1932.**

**Phoenix Ingraham, Justice of the Supreme Court of the State of New York.**

256 **Benefit Maps Attached to Final Decree of Supreme Court**

(These maps are printed at page 1890 of Volume IV of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in four volumes" received and marked in evidence at page 202 of this record.)

[The Final Decree of the Supreme Court in this matter was filed in the office of the Clerk of the County of New York on May 12, 1932.]

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**Notice of Filing Supplemental and Amended Tentative Decree and to File Objections**

New York Supreme Court, First Judicial District.

[Same Title]

Notice Is Hereby Given to all parties interested in the above entitled proceeding, as fol-

258 lows:

First.—That the above named court, after considering the testimony and proofs submitted on the trial of the above entitled proceeding, has completed its supplemental and amended estimate of the compensation which should be made by The City of New York to the respective owners of the real property to be acquired in this proceeding and has made an assessment of the value of the benefit and advantage of the improvement

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to the respective owners of the real property within the area of assessment for benefit herein, and the supplemental and amended tentative decree of the said court as to awards for damages and as to assessments for benefit was signed on the 1st day of March 1932 by Hon. Phoenix Ingraham, Justice of the Supreme Court presiding at the trial of the above entitled proceeding, and was filed with the Clerk of the County of New York on the 7th day of March, 1932, for the inspection of whomsoever it may concern.

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Second.—That the said court has assessed all the real property within the area of assessment fixed and prescribed as the area of assessment for benefit by the Board of Estimate and Apportionment on the 29th day of June, 1923, and that the said area of assessment includes the parcels of real property situate and being in the Borough of Manhattan, in the City of New York, which, taken together, are bounded and described as follows, viz.:

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Zone A, which is to bear 65 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between 42d Street and 43d Street; on the east by the centre line of 3d Avenue; on the south by a line midway between East 41st Street and East 42d Street, and on the west by the centre line of Park or 4th Avenue.

Zone B, which is to bear 5 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East

262 *Notice of Filing Supplemental and Amended Tentative Decree*

42d Street and East 43d Street; on the east by the centre line of 2d Avenue; on the south by a line midway between East 41st Street and East 42d Street, and on the west by the centre line of 3d Avenue.

Zone C, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

263 On the north by a line midway between East 42d Street and East 43d Street; on the east by the centre line of Park or 4th Avenue; on the south by a line midway between East 41st Street and East 42d Street, and on the west by the centre line of 5th Avenue.

Zone D, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by the centre line of East 50th Street; on the east by the centre line of 2d Avenue; on the south by the centre line of East 34th
264 Street, and on the west by the centre line of 5th Avenue excluding therefrom the territory within the boundaries of the Zones A, B and C.

Third.—That The City of New York, and all other parties interested in such proceeding or in any of the real property affected thereby having any objections thereto, shall file such objections in writing, duly verified in the manner required by law for the verification of pleadings in an action, setting forth the real property owned by the objector and his post office address, with the Clerk of the County of New York on or before

*Notice of Filing Supplemental and Amended Tentative Decree*

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the 28th day of March, 1932, and parties other than The City of New York, shall within the same time serve on the Corporation Counsel of The City of New York, at his office, Municipal Building, Room 1559, in the Borough of Manhattan, City of New York, a copy of such verified objections.

Fourth.—That on the 5th day of April, 1932, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, the Corporation Counsel of The City of New York will 266 apply to the Hon. Phoenix Ingraham, the Justice of the Supreme Court who signed said supplemental and amended tentative decree at a Trial Term, Part XIV, of the Supreme Court, to be held in the County Court House in the Borough of Manhattan to fix a time when said Justice will hear the parties who will have filed objections to the said supplemental and amended tentative decree.

Dated, New York, March 7, 1932.

267

Arthur J. W. Hilly, Corporation Counsel, Office and Post Office Address, Municipal Building, New York City.

[The above notice was duly published and posted and served as by law required.]

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## Objections of The City of New York

New York Supreme Court, New York County:

[Same Title]

To the Honorable the Supreme Court of the State of New York.

The City of New York hereby objects to the supplemental and amended tentative decree of the Court in the above entitled proceedings, filed
269 in the office of the Clerk of the County of New York on the 7th day of March, 1932, on the following grounds:

1. That the award made by the Court for the property acquired herein and designated in the supplemental and amended tentative decree as Damage Parcel No. 1 is grossly excessive.

2. That the said award is so excessive as to indicate that the Court adopted an erroneous theory in determining said award.

270 3. That the Court adopted an erroneous theory in determining said award.

4. That the said award contains an item of $539,117.41, awarded as the value of the so-called rights to impair light, air and access appurtenant to the land abutting upon East 42nd Street, which award is based upon an erroneous theory and is contrary to law.

5. That the said item of $539,117.41 included in said award, is erroneously awarded as the

value of the so-called rights of the Railroad Company to impair light, air and access appurtenant to the land abutting upon East 42nd Street, as property of the Railroad Company independent of and separate from the railroad itself on East 42nd Street and the right to maintain the railroad structure and operate said railroad on East 42nd Street. 271

6. That the said item of $539,117.41 included in said award, is erroneously awarded as the value of the so-called rights of the Railroad Company to impair light, air and access appurtenant to the land abutting upon East 42nd Street, as property of the Railroad Company independent of and separate from the franchise of the Railroad Company obtained from the City and State of New York to maintain and operate the elevated railroad in East 42nd Street and separate and distinct from the elevated railroad structure in said street. 272

7. That the said award insofar as it contains the said item of $539,117.41 as the value of the so-called rights of the Railroad Company to impair light, air and access appurtenant to the land abutting upon East 42nd Street, is arbitrary, speculative, fanciful and conjectural. 273

8. That the said award insofar as it contains the said item of $539,117.41 as the value of the so-called rights to impair light, air and access appurtenant to the land abutting upon East 42nd Street, is not supported by competent evidence.

9. That the said award insofar as it contains

274 said item of $539,117.41 as the value of the so-called rights of the Railroad Company to impair the light, air and access appurtenant to the land abutting upon East 42nd Street is not in accordance with, and is contrary to the opinion of the Appellate Division of the Supreme Court, First Department, in this proceeding dated May 9, 1930, filed in the office of the Clerk of said Court on June 3, 1930, and filed with the remittitur of said Court in the office of the Clerk of the County of New York, on June 26, 1930.

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10. That the said item of $539,117.41 of said award includes the sum of $205,387.98 as the value of so-called rights of the Railroad to impair light, air and access appurtenant to land abutting upon East 42nd Street, acquired by the Railroad by prescription, the award of which sum of $205,387.98 is contrary to law and based upon an erroneous theory.

11. That the said item of $539,117.41 of said award includes the sum of $205,387.98 as the
276 value of so-called rights of the Railroad to impair light, air and access appurtenant to land abutting upon East 42nd Street, acquired by the railroad by prescription, the award of which sum of $205,387.98 is not supported by any competent evidence.

12. That the said item of $539,117.41 of said award includes the sum of $205,387.98 as the value of so-called rights of the Railroad to impair light, air and access appurtenant to land abutting upon East 42nd Street, acquired by the Railroad by prescription, the award of which sum of $205,387.98 is contrary to and not in accord-

ance with the opinion of the Appellate Division of the Supreme Court, First Department, in this proceeding dated May 9, 1930, filed in the office of the Clerk of said Court on June 3, 1930, and filed with the remittitur from said Court in the office of the Clerk of the County of New York on June 26, 1930.

13. That the Court erroneously admitted in evidence over the objection of the City of New York testimony upon the value of the so-called rights to impair light, air and access appurtenant to the land abutting upon East 42nd Street, which was incompetent, irrelevant and immaterial. 278

Joel J. Squier, Assistant Corporation Counsel in Charge of the Bureau of Street Openings.

(Duly verified by Joel J. Squier on March 8, 1932.)

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## Objections of Interborough Rapid Transit Co. 279

New York Supreme Court, First Department.

[Same Title]

To the Honorable the Supreme Court of the State of New York.

Objections of Claimant, Interborough Rapid Transit Company to the Supplemental and Amended Tentative Decree, herein dated March 1, 1932, and filed with the Clerk of the County of New York March 7, 1932.

280 *Objections of Interborough Rapid Transit Co.*

The claimant, Interborough Rapid Transit Company, hereby objects to the Supplemental and Amended Tentative Decree of the Court in the above entitled proceeding signed on the 1st day of March, 1932, and filed with the Clerk of the County of New York on the 7th day of March, 1932, upon the following grounds:

The claimant, Interborough Rapid Transit Company, is a corporation created and existing under the laws of the State of New York and was
281 on the day of vesting title herein by the City of New York, December 7, 1923, in possession as Lessee of the claimant, Manhattan Railway Company under a lease dated January 1, 1903, for a term of 999 years from the 1st day of November, 1875, of all the railroads and franchises of said Manhattan Railway Company, excepting only such franchises as may be necessary to preserve its corporate existence, including all the property taken, impaired or damaged in this proceeding, and in respect of which the sum of $619,352.41 was awarded in and by the Supplemental and Amended Tentative Decree herein to the said Manhattan
282 Railway Company, subject to the said leasehold interest of this claimant and to certain mortgages.

The property so taken consists of an elevated railway forming part of the Manhattan Railway system and the Third Avenue Line thereof, extending upon, in and over East 42nd Street in the Borough of Manhattan, City of New York, from Third Avenue to a point at or near the junction of East 42nd Street with Park Avenue, together with all the property rights, franchises and damages taken, impaired or suffered by virtue of this proceeding, including the cost to this claimant of reconstructing portions of the said Third Avenue Line, necessitated and required in the

interest of public necessity and convenience by reason of the taking of the said spur as found and directed by the order of the Transit Commission pursuant to the special legislative acts, to wit: Chapter 788 of the Laws of 1917, Chapter 611 of the Laws of 1919 and Chapter 635 of the Laws of 1923, authorizing this proceeding.

The said elevated railway was constructed pursuant to the provisions of the Rapid Transit Act, Chapter 606 of the Laws of 1875, by the procurement of the City of New York and the franchise 284
under which the property herein taken was acquired and possessed by the said claimant was held to be a contract upon consideration—Mayor of The City of New York *v.* Manhattan Ry. Co., 143 N. Y. 1, and a grant of a perpetual right to the unimpaired use and occupation of the streets, avenues and public places constituting the routes of the said elevated railroads.

Subsequent to said grant and the construction of said railroad the Court of Appeals of this State held that certain rights in and control over the streets denominated private street ease- 285
ments of light, air and access included within the boundaries of the said grant were in fact vested not in the City but in the owners of property abutting upon the streets, and constituted private property within the protection of Article I, Section 6 of the Constitution of this State. Story *v.* N. Y. El. Ry. Co., 90 N. Y. 122. Subsequent to this decision the courts of this State have uniformly, and by virtue of upward of 2,000 decisions, required the acquisition by this claimant and by its predecessors in interest, of title to the said private easements and the payment therefor of the full actual and present value there-

of measured not by the value of the railway use, but by that of the property taken.

Pursuant to said decisions the Manhattan Railway Company and this claimant as lessee acquired and at the date of taking title herein possessed all of the said private property in and to 42nd Street and Third Avenue taken by the elevated railway structures therein by virtue of deeds of absolute conveyance of title thereto granted pursuant to purchase or court decrees, by condemnation and by prescription (Hindley *v.* Manhattan Ry. Co., 185 N. Y. 335).

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In this proceeding the actual and present value of the said private property in the street known as street easements of light, air and access acquired, owned and possessed as aforesaid, by this claimant and by the Manhattan Railway Company, was proved without contradiction or denial to be the sum of $3,601,473, if valued in accordance with the decisions of the courts of this State, which constituted a rule of property, in reliance upon and by reason of the computation of which the said claimants acquired the said easements and all of them. The said sum of $3,601,473 was the admitted value at the time of the taking herein of the said private easements to the owners of property abutting upon said 42nd Street who, by virtue of this proceeding instituted by their procurement, reacquired and now possess the said easements. While the nominal title to the said easements was taken in this proceeding by The City of New York, it became instantly vested thereby in the abutters, for the title of abutters to the private street easements does not arise out of grant but is implicit in the fiduciary capacity in which the City takes title to streets, and the neces-

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sary effect of the taking of the said private property from the claimants herein was to re-vest it in the abutting owners. The City did not attempt to controvert the value of the said private easements established in this proceeding as aforesaid, but upon the trial at Extraordinary Special Term contended that their value should be measured solely in relation to the railway use, and the Court then awarded, not the admitted value of the said property for the customary and available uses of said property, $3,601,473, but the sum of $750,000 290
based upon original costs rather than the present reproductive or exchange values and upon a use limited to railway purposes. The learned Appellate Division upon the appeal herein from the said determination adjudged that the value of the said easements should be determined "upon the basis of the value judicially determined at the time of the original acquisition of these rights" (229 App. Div. 630) and in and by the supplemental and amended tentative decree herein, notwithstanding undisputed proof received upon the retrial of an actual, intrinsic, market and reproduc- 291
tive value of $3,601,473, the value of the said property taken in this proceeding, December 7, 1923, was determined upon values judicially found to be the actual market value of the said property not at the time when the said property was taken and acquired by the City in this proceeding but when it was acquired by the claimants herein at dates averaging more than 25 years prior thereto. Upon this basis, which is wholly without constitutional sanction or legal precedent, the supplemental and amended tentative decree to which the claimant herein objects has awarded the sum of

292 *Objections of Interborough Rapid Transit Co.*

$539,117.41 for the said private property, excepting one parcel of great value acquired from the City itself, by virtue of its said grant upon consideration, for which nothing was awarded.

The said grant from the City of perpetual and unimpaired rights of possession and occupation in 42nd Street and the other streets, avenues and public places constituting the routes of the said Manhattan Railway, included in addition to the said private easements of light, air and access
293 and the operating franchise, street rights of perpetual occupation and control (distinct from and not included in the said private easements of light, air and access) which had been held by the Court of Appeals to constitute an interest in and to a certain extent a title to the street in the nature of property. This right of occupation of street space is of great value as determined by the rules of valuation thereof established by and enforced by the City of New York itself, and its acquisition and the consequent freeing of the surface of the street for vehicular traffic has greatly
294 benefited and is of value, advantage and profit to the entire area of assessment herein, as well as to the City of New York. The decision of this Court, March 1, 1932, made no award for the aforesaid perpetual right of occupation of the street by the columns and structure of the said spur or for the operating franchise and no award was made for the value of the elevated railway structure other than scrap value "taken down," for which the sum of $235 was awarded. The further sum of $80,000 was awarded for the cost of reconstruction, by this claimant, of the station at 42nd Street and Third Avenue, rendered neces-

sary by the taking of the said railway in 42nd Street, the aggregate of all the items of the said award being the sum of $619,352.41.

The Interborough Rapid Transit Company severally and as lessee of the property taken, makes the following objections to the Supplemental and Amended Tentative Decree:

1. The said award is inadequate and insufficient in amount and the Court erred and adopted and applied erroneous theories of law in awarding the sum of $619,352.41 for the property taken 296
and should have decided and it was error not to decide that the just compensation was $4,201,931, representing the following items, to wit:

(1) $3,601,493, the admitted value of the private easements.

(2) $80,000, the damage and loss separately and solely sustained by the claimant Interborough Rapid Transit Company, by reason of the necessity of restoring and replacing the facilities of the Third Avenue Line destroyed or impaired by the 297
physical disruption of that line, consequent upon the removal of the 42nd Street spur, being a portion only of the actual restoration and replacement expenditures forced upon this claimant by the taking herein and in which no other claimant possesses any interest or right whatever.

(3) $300,000 constituting the value of the street space (other than that represented by the said private easements) occupied by the columns, foundations and other structures, the removal of which admittedly and greatly increased the vehicular capacity of 42nd Street and formed the sole

298 *Objections of Interborough Rapid Transit Co.*

basis of the assessment of all the property in the entire assessment district extending from 34th Street to 50th Street and from 2nd to 5th Avenues other than those properties which immediately abut upon the 42nd Street spur and which have been revested with the private street easements aforesaid.

(4) $100,000 representing the value of the operating franchises giving the said Manhattan Railway perpetual access to the most central and val-
299 uable traffic producing district in the City of New York.

(5) $120,438 representing structures taken, the minimum value in evidence.

2. The said award is based upon incorrect principles of law in that the amount awarded for the said private easements of light, air and access was not based upon the reproductive or market value of the said property at the date of vesting title or measured by the uses for which it was
300 available, and the Court erred in deciding that the value of the said property or any part thereof should be based upon the value judicially determined at and as of the time of its original acquisition or on the value of any part or parts thereof at any time other than the date of vesting title thereto in this proceeding, the operating value of the railway or by the availability of the said real property solely for railroad purposes and because it based its conclusion that the said private easements of light, air and access were worth only $539,117.41 solely upon the judicial determination of the value of a portion only of said easements at a period remote from the date of

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vesting title herein and in the absence of any evidence that the value of said properties or any of them was at the time of vesting title herein the same as at the time of such judicial determinations or of any of them and notwithstanding the uncontradicted evidence that in fact the value of the said easements and each of them at the date of vesting title was several times greater than at the date of such judicial determinations, or any of such determinations, and it was error not to decide that the said real property, to wit: the private easements of light, air and access must be valued as any other property and pursuant to the principles of law universally and without exception prescribed and enforced by the courts in respect of the acquisition of the same property by the said claimants and upon the basis of which similar property has universally been purchased and sold as well by this claimant as by others, to wit: the decreased or increased value of abutting property resulting from the loss of acquisition of the said private street easements, and the Court erred in deciding that the Manhattan Railway Company and this claimant did not acquire and own the said private rights in and control over the street denominated easements of light, air and access, as fully and to the same extent as the owners of abutting property and that the said companies were not entitled to the full, actual and present value of the said property but only to a value limited by judicial determination of value which related to a portion only of said easements, and to dates of determination not one of which was less than 20 years prior to the date of vesting title herein.

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304 *Objections of Interborough Rapid Transit Co.*

The Court erred in holding that the property in and right of control over the street constituting the said private easements of light, air and access acquired as aforesaid by the said claimants or their predecessors, were limited to a railway user, and in holding that the value of said property ceased by reason of the claimant's acquisition thereof to be measurable by its availability for other than railway uses or for the customary and former use of said property, to which it was restored by this proceeding.

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3. The Court erred in holding that the property taken constituting the permanent rights of occupation in the street, other than the said private easements of light, air and access, had no value.

4. The Court erred in holding that the elevated railway structure in 42nd Street should be valued as if it were taken down and scrapped, although it was an adequate and highly useful portion of an efficient and profitable railway.

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5. The Court erred in not awarding any value or damage for the perpetual franchises taken or impaired in this proceeding on the ground that the portion of the railway taken, although part of a profitable railway, was not as a separate operating unit in itself profitable.

6. The Court erred in not awarding any value or damage for the private street easements admittedly the absolute property of these claimants, Manhattan and Interborough Companies, at the date of vesting title herein on the ground that the

privately owned frontage to which they were appurtenant at the time of the franchise grant, the construction of the railway and the date of vesting title, was for an intermediate and temporary period occupied by an intersecting street, the former Depew Place.

7. The property is taken and the award is made in violation of the provisions of

(a) Article I, Section 6 of the Constitution of the State of New York, which provides that no 308
person shall be deprived of property without due process of law and that private property shall not be taken for public use without just compensation.

(b) Article I, Section 10 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, and

(c) The Fourteenth Amendment to the Constitution of the United States, Section 1 thereof, 309
which provides that no state shall deprive any person of life, liberty or property without due process of law, in that the statutes authorizing this proceeding, the amount awarded in the supplemental and amended tentative decree for the property taken in this proceeding, and the rule of law adopted by this Court in respect thereto impair the obligation of contracts, to wit: the deeds of conveyance to and grants of the said easements to the said claimants and their predecessors and the title thereto acquired thereby and by prescription and condemnation under and by virtue of which and the law of this State and the decisions

310 of the courts assuring the said claimants that their said easements of light, air and access were secured by contract as expressed in those decisions, the said claimants possessed the said property taken in this proceeding; and in that the amount awarded in the supplemental and amended tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken and that the proceedings herein and the fact and the amount of said award do not constitute due process of law and
311 this claimant hereby draws in question the constitutionality of said award and of said supplemental and amended tentative decree and of all the provisions thereof and/or of statutes or of law assumed or asserted to authorize the said award and the enforcement thereof.

The said claimants acquired the said easements or private rights of control in, over and to the said 42nd Street subsequent to the decisions in Story *v.* N. Y. Elevated R. R. Co., 90 N. Y. 122, and Lahr *v.* Met. R. R. Co., 104 N. Y. 268, and other cases constituting a rule of property, as held
312 in Muhlker *v.* Harlem Ry. Co., 197 U. S. 544, and establishing and guaranteeing that the said private easements of light, air and access constituted property within the protection of constitutional provisions against the taking of private property without just compensation, and rendering said property inviolable as against attempted appropriation under legislative sanction for any purpose or to any extent whatever, without full, adequate and just compensation.

The City of New York as well as the courts of this State have heretofore uniformly recognized, adopted and enforced as a rule of property the

principle of the said decisions that the said property, constituting private rights in the streets denominated easements of light, air and access and acquired and possessed by the said claimants in perpetuity as aforesaid, must be acquired, valued and taxed upon the basis of their present full, adequate and exchange value in the same manner and to the same extent as any other form of real property or interest therein, People *ex rel.* Man. Ry. Co. *v.* Barker, 165 N. Y. 305, 316, and this principle of valuation has been uniformly applied in a 314
series of decisions "unprecedented" in its magnitude "in the history of the courts," Hindley *v.* Man. Ry. Co., 185 N. Y. 335, 357, whether the said private easements have been possessed by abutting owners or the said claimants and irrespective of whether they have been devoted to railway purposes or otherwise.

8. The property is taken and the award is made in violation of the statutes, Chap. 788 of the Laws of 1917, Chap. 611 of the Laws of 1919 and Chap. 635 of the Laws of 1923, under and pursuant to which this proceeding is conducted, and in 315
violation of due process of law and the principles of law and rules of property prescribed, determined and established by the laws and judicial determinations of the courts of this State under which just compensation for private property taken for public must be made and determined, in that the amount awarded in the Supplemental and Amended Decree for the property taken does not constitute just compensation therefor.

Chap. 788 of the Laws of 1917, of which Chap. 611 of the Laws of 1919 and Chap. 635 of the Laws of 1923 were amendatory was permissive and au-

316 *Objections of Interborough Rapid Transit Co.*

thorized the removal of the said railway and the disposition of the property of the claimants by negotiation. This claimant upon voluntary discontinuance of portions of its railroad had, as is undisputed in the record, sold and conveyed similar easements to the owners of abutting property and by the purchase of abutting properties has realized or acquired the full, adequate and market value of the said easements measured by the rule of property established as aforesaid and
317 is entitled to the benefit of the principles of law under which the value of this and all similar property taken for public use has uniformly and without exception been determined, whether such property was at the time of taking devoted to railway or any other purposes whatever, to wit: its actual exchange and present value, and that the constitutional prohibition against the taking of private property without just compensation was at the date of vesting title herein as applicable to the said private easements as when the same property was taken and acquired for full and just
318 compensation by the said claimants (Story *v.* N. Y. El. Ry. Co., *supra*).

9. The court should have decided and it was error not to decide that the portion of the sum expended by this claimant in reconstructing the Third Avenue Line and the station thereof at Third Avenue and 42nd Street, necessitated by the taking of the said spur, and amounting as found by the court, to $80,000, should be awarded to the Claimant Interborough Rapid Transit Company, the decision having established that the said sum of $80,000 was an element of damage inflicted solely upon this claimant as the opera-

tor of the property and that it represented only that part of its expenditures necessitated by the disruption of property and that it did not constitute any part of the property taken or any additional value to the part not taken, and the said item of damage to this claimant Interborough Rapid Transit Company, was therefore not intended to be included and was not included in the agreement made in open court that the claimants Manhattan Railway Company and Interborough Rapid Transit Company would endeavor to effect an apportionment of the award in which they possessed a joint interest.

The Court should therefore increase the total award from $619,352.41 to $4,201,931, of which amount the sum of $80,000 should be severally awarded to the claimant Interborough Rapid Transit Company.

Wherefore, the Interborough Rapid Transit Company, as lessee of the property taken, a claimant in this proceeding, prays that it may be granted a hearing on its objections and that the Court may correct and alter the supplemental and amended tentative decree and for such other and further relief as may be proper.

James L. Quackenbush, Attorney for Claimant, Office and Post Office Address, 165 Broadway, Borough of Manhattan, New York City.

(Duly verified by H. M. Fisher, Secretary of the Interborough Rapid Transit Company, on March 24, 1932.)

322

## Objections of Manhattan Railway Co.

New York Supreme Court, First Department.

[Same Title]

Objections of Claimant, Manhattan Railway Company, as the owner and Lessor of the property taken in the above entitled proceeding, to the Supplemental and Amended Tentative Decree, filed herein on March 7, 1932.

The Claimant, Manhattan Railway Company,
323 hereby objects to the Supplemental and Amended Tentative Decree of the court in the above entitled proceeding, which was signed on March 1, 1932, and filed with the Clerk of the County of New York on March 7, 1932, upon the following grounds:

The claimant, Manhattan Railway Company, is a corporation organized and existing under the laws of the state of New York, and is the owner of a system of elevated railroads in the Boroughs of Manhattan and the Bronx, including as part of the Third Avenue Line thereof, property taken
324 in the above entitled proceeding. The property so taken is that part of the elevated railway which was on East 42nd Street in the Borough of Manhattan extending from Third Avenue on East 42nd Street to Park Avenue, and is described in detail in the statute authorizing its condemnation.

In 1903 Manhattan Railway Company leased its elevated railroads, including the property taken in this proceeding, to the Interborough Rapid Transit Company for 999 years from No-

vember 1, 1875; on December 7, 1923, the day of vesting of title by the city of New York in this proceeding, Interborough Rapid Transit Company was in possession of the property so leased, including the property taken in this proceeding. The property when taken was subject to the lien of the Consolidated Mortgage of the Manhattan Railway Company to Central Trust Company (now Central Hanover Bank & Trust Company) as trustee, dated February 26, 1890, and to the lien of the Second Mortgage of the Manhattan Railway Company to The Equitable Trust Company of New York (now Chase National Bank) as trustee, dated June 1, 1913.

The Supplemental and Amended Tentative Decree contained an award of $619,352.41 as compensation for the property taken, of which $539,117.41 was for the easements of light, air and access, $235 for the structure, and $80,000 for the cost of reconstruction by the Interborough Rapid Transit Company of the station at 42nd Street and Third Avenue, made necessary by the taking of the railroad on East 42nd Street in the present proceeding.

The Supplemental and Amended Tentatve Decree was prepared after the decision by the learned Appellate Divsion upon appeal from a prior decree herein, in which decision the learned Appellate Division adjudged that the value of the easements should be determined, "Upon the basis of the value judicially determined at the time of the original acquisition of these rights," and that the value of the elevated structure in the street should be considered as taken down.

328 *Objections of Manhattan Railway Co.*

In the Supplemental and Amended Tentative Decree the value of the easements was determined upon values judicially found to be the market value of the easements, not when acquired by the city in this proceeding, but at the time acquired by the Manhattan Railway Company, and the value of the easements in the tentative decree is not the present value of such property. The value in the tentative decree for the structure is the scrap value, and is given on the theory that
329 the part of the railroad taken in this proceeding, although not a separate operating unit, was not profitable.

The easements of light, air and access were recognized and established by many decisions of the Court of Appeals of this state, in which the courts held that by the construction of the railroad in the street the railroad company took the easements of the owners of the property abutting on the street. In accordance with these decisions the courts, upon the application of the owners of the property abutting upon the streets
330 compelled the Manhattan Railway Company and its predecessors to acquire the easements of light, air and access from the owners of the abutting property and to pay therefor the value of such easements at the time they were taken by the railroad company, which value represented the difference in the value of the abutting property with and without the easements. Pursuant to the decisions of the Court of Appeals and as a result of the suits brought by the owners of the abutting property, the Manhattan Railway Company has acquired all of the easements of light, air and access in East 42nd Street and Third

331 Avenue which had been taken through the construction of the elevated railroad, and the Manhattan Railway Company owned such easements at the time they were taken in the present proceeding. The easements were acquired by the Manhattan Railway Company in various ways, through conveyance pursuant to Court Decree, through purchase and conveyance, by condemnation and by prescription.

In this proceeding the present value of the easements was proven to be the sum of $3,601,493, 332 such value being proven in accordance with the decisions of the Court of Appeals of this state which determined the value of the easements at the time they were acquired by the railway company, and which decisions now constitute a rule of property in this state.

The Manhattan Railway Company as the owner of the property taken, makes the following objections to the Supplemental and Amended Tentative Decree:

333 1. The said award is inadequate and insufficient in amount, and the court erred in awarding the sum of $619,352.41 for the property taken, and should have decided, and it was error not to decide, that the just compensation for the property taken was $4,201,931, represented as follows:

(a) $3,601,493 the undisputed value of the easements of light, air and access;

(b) $80,000, the damage and loss sustained by the Interborough Rapid Transit Company by reason of the necessity of restoring and replacing the facilities of the Third Avenue line destroyed

334 *Objections of Manhattan Railway Co.*

by the taking of the property in the present procedure.

(c) $300,000, representing the value of the street space occupied by columns, foundations and other fixtures.

(d) $100,000, representing the value of the perpetual franchise granted to the railroad company to construct and operate the railroad in East 42nd Street.

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(e) $120,438, representing the value of the physical structures in the street taken in the present procedure.

2. The award in the Supplemental and Amended Tentative Decree is based upon incorrect principles of law in that the amount awarded for the easements of light, air and access is not made in accordance with the decisions of the Court of Appeals and the principles established by those decisions, and the award does not rep-

336 resent the value of the easements at the date of the vesting of title, but represents their value at the time they were acquired by the railroad company. The court erred in deciding that the value of the easements should be based upon the value judicially determined at the time of their acquisition by the railroad company, and the court erred in not determining that the value of the easements should be their value at the time they were taken in the present proceeding determined in accordance with the decisions of the Court of Appeals made at the time the easements were acquired, and in accordance with the principles established by those decisions.

The court erred in holding that the elevated railway structure taken in this proceeding should be valued as if it were taken down and scrapped, and in awarding only nominal damages therefor. 337

The court erred in not awarding value or damages for the franchise taken and impaired in this proceeding.

The court erred in not awarding damages for the permanent rights of occupation in the streets other than the private easements of light, air and access. 338

3. The property is taken and the award is made in violation of the provisions of

(a) Article 1, Section 6 of the Constitution of the State of New York, which provides that private property shall not be taken for public use without just compensation;

(b) Article 1, Section 10 of the Constitution of the United States which provides that no state shall pass any law impairing the obligation of contracts; and 339

(c) The Fourteenth Amendment to the Constitution of the United States, Section 1 thereof, which provides that no state shall deprive any person of life, liberty or property without due process of law,

in that the statute authorizing this proceeding, the amount awarded in the Supplemental and Amended Tentative Decree for the property taken in this proceeding, and the rule of law adopted by this court in respect thereto, impair

340 *Objections of Manhattan Railway Co.*

the obligation of contracts, to wit: the deeds of conveyance and the title by prescription, under which the claimant owned and held the property taken in this proceeding, and in that the amount awarded in the Supplemental and Amended Tentative Decree for the property taken in this proceeding does not constitute just compensation for the property so taken, and that the proceedings herein and the fact and the amount of said award do not constitute due process of law; and this
341 claimant hereby draws in question the constitutionality of said award and of said decree and of all the provisions thereof, and/or of statutes or of law assumed or asserted to authorize the said award and the enforcement thereof.

4. The property is taken and the award is made in violation of

(a) The Statute (Laws of New York, 1923, Chapter 635) under which this proceeding is conducted which provides, among other things, that just compensation shall be awarded for the
342 property taken; and

(b) the principles of law under which compensation for private property taken for public use is to be determined, and particularly compensation for property of the kind taken in this proceeding,

in that the amount awarded in the Supplemental and Amended Tentative Decree for the property taken in this proceeding does not constitute just compensation for the property so taken.

The court should have decided, and it was error not to decide, that the value of the easements of

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light, air and access had been determined many times by the Court of Appeals in proceedings in which the Manhattan Railway Company acquired such easements, and in which the principles for determining the value of such easements were established, and the court should have decided, and it was error not to decide, that the present value of the easements at the time they were taken in this proceeding should have been determind in accordance with the aforesaid decisions of the Court of Appeals and the principles thereby established.

344

The court should have decided, and it was error not to decide, that the value of the physical structure in the street taken in the present proceeding should be determined, not by income allocated to the part of the railroad taken, but by the present value of the railroad structure ascertained through the cost of reconstruction less depreciation at the time the property was taken.

The court should, therefore, make the following corrections and alterations in the Supplemental and Amended Tentative Decree as to the award of compensation for the property taken:

345

It should increase the award from $619,352.41 to $4,201,931.

Wherefore, the Manhattan Railway Company, as owner and lessor of the property taken, a claimant in this proceeding, objecting to the Supplemental and Amended Tentative Decree, prays that it may be granted a hearing on its objections and that the Court may correct and alter the decree, and for such other and further relief as may be proper.

346 *Objections of Chase National Bank*

William Roberts, Attorney for Manhattan Railway Company, Office and Post Office Address, 233 Broadway, New York, N. Y.

(Duly verified by William Roberts, attorney for Manhattan Railway Company, on March 25, 1932.)

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**Objections of Chase National Bank of City**
347 **of New York**

Supreme Court, New York County.

[Same Title]

Objections of the Chase National Bank of the City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company, dated June 1, 1913, to the Supplemental and Amended Tentative Decree.

348 The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, whose address is 18 Pine Street, Borough of Manhattan, City of New York, is the Trustee under a Deed of Trust by the Manhattan Railway Company to said The Equitable Trust Company of New York, dated June 1, 1913, the lien of which covers the property taken in condemnation in the above entitled proceeding. At the time the property was taken, bonds of Manhattan Railway Company secured by the lien of the Second Mortgage on the property taken were issued and

outstanding in the hands of the public, and are now outstanding, in the amount of $4,523,000 principal amount. The property taken is the elevated railway which was on East 42nd Street in the Borough of Manhattan (including the franchise to construct and operate an elevated railroad on East 42nd Street, the easements of light, air and access in the street where the railroad stood and the railroad structure in the street) which constituted that part of the Third Avenue railway line owned by the Manhattan Railway 350
Company which extended from Third Avenue, on East 42nd Street, to Park Avenue; the property taken is described in detail in the statute authorizing the condemnation and in the petition of The City of New York by which this proceeding was instituted.

In 1903 the Manhattan Railway Company leased its elevated railway system in the Boroughs of Manhattan and The Bronx, including as part of the Third Avenue line thereof the property taken in this proceeding, to The Interborough Rapid Transit Company as lessee for a period of 999 351
years from November 1, 1875. At the time the present proceeding was begun and the property taken, the Interborough Rapid Transit Company was in possession of the property so leased, including the property taken in this proceeding. The property when taken was subject to the lien of the Consolidated Mortgage of the Manhattan Railway Company to Central Union Trust Company (now Central Hanover Bank & Trust Company) as Trustee, dated February 26, 1890, and to the lien of the Second Mortgage of the Manhattan Railway Company to The Equitable Trust

352 *Objections of Chase National Bank*

Company of New York (now The Chase National Bank of the City of New York) as Trustee, dated June 1, 1913.

The proceeding was instituted under a special statute (Chapter 635 of the Laws of 1923) at an Extraordinary Special Term of the Supreme Court without a jury. The Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company dated June 1, 1913, duly filed its verified claim in this proceeding. Claims were filed also by three
353 other claimants, namely, the Manhattan Railway Company as owner and lessor of the property taken, the Interborough Rapid Transit Company as lessee, and the Central Union Trust Company as Trustee of the Consolidated Mortgage of the Manhattan Railway Company securing certain of its outstanding bonds.

After hearing the testimony the Court caused a tentative decree to be filed on the 11th day of April, 1927, in the office of the Clerk of the County of New York, and notice of the filing thereof was published in the City Record on April
354 11, 1927. The tentative decree contained an award of $975,438 as compensation for the property taken. The Court filed an opinion on April 10, 1926, in which it set forth the principles of law on which it made the award. The Court did not allocate the amount awarded as compensation among the respective claimants as these claimants had stipulated in open court that they would first undertake to allocate the award without the assistance of the Court.

After the objections to said tentative decree were heard by the Court a final decree dated Feb-

ruary 28, 1928, was filed in the office of the Clerk of the County of New York on March 14, 1928. An appeal was taken to the Appellate Division of the Supreme Court, First Department, from the said final decree. A decision was rendered by the said Appellate Division on May 9, 1930, modifying the said final decree in accordance with its opinion. In its decison the learned Appellate Division adjudged that the value of the easements should be determined, "Upon the basis of the value judicially determined at the time of the original acquisition of these rights," and that the value of the elevated structure in the street should be considered as taken down. The order of the Appellate Division directed that further proof be taken by the Supreme Court in accordance with the decision of the Appellate Division. This proof was taken before Mr. Justice George V. Mullan at a Special Term, Part III of this Court on November 8 and 9, 1930. The Court rendered its opinion on the further trial of this proceeding on April 23, 1931, and thereafter caused a Supplemental and Amended Tentative Decree to be filed on the 16th day of June, 1931. Objections to said Supplemental and Amended Tentative Decree were filed by The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee as aforesaid, on September 30, 1931. Thereafter and before the entry of a supplemental and amended Final Decree, Mr. Justice Mullan died and the proceeding was again restored to the calendar for the purpose of taking further proof in accordance with said order of the Appellate Division. A retrial was had before Mr. Justice Phoenix In-

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358 *Objections of Chase National Bank*

graham at Special Term, part VI of this Court on February 1 and 8, 1932, and the Court's decision was filed on February 26, 1932. A Supplemental and Amended Tentative Decree was signed by Mr. Justice Ingraham on March 1, 1932, and filed herein on March 7, 1932.

The Supplemental and Amended Tentative Decree contains an award of $619,352.41 as compensation for the property taken, of which $539,117.41 was for the easements of light, air and access,
359 $235 for the structure and $80,000 for the cost of reconstruction by the Interborough Rapid Transit Company of the station at 42nd Street and Third Avenue made necessary by the taking of the railroad on East 42nd Street in the present proceeding.

In the Supplemental and Amended Tentative Decree the value of the easements was determined upon values judicially found to be the market value of the easements, not when acquired by the city in this proceeding, but at the time acquired by the Manhattan Railway Company, and the value of the easements in said Tentative Decree is not
360 the present value of such property. The value in said Tentative Decree for the structure is the scrap value, and is given on the theory that the part of the railroad taken in this proceeding, although not a separate operating unit, was not profitable.

The easements of light, air and access were recognized and established by many decisions of the Court of Appeals of this state, in which the courts held that by the construction of the railroad in the street the railroad company took the easements of the owners of the property abutting on the street. In accordance with these decisions the

courts, upon the application of the owners of the property abutting upon the streets compelled the Manhattan Railway Company and its predecessors to acquire the easements of light, air and access from the owners of the abutting property and to pay therefor the value of such easements at the time they were taken by the railroad company, which value represented the difference in the value of the abutting property with and without the easements. Pursuant to the decisions of the Court of Appeals and as a result of the suits brought by the owners of the abutting property, the Manhattan Railway Company has acquired all of the easements of light, air and access in East 42nd Street and Third Avenue which had been taken through the construction of the elevated railroad, and the Manhattan Railway Company owned such easements at the time they were taken in the present proceeding. The easements were acquired by the Manhattan Railway Company in various ways, through conveyance pursuant to Court Decree, through purchase and conveyance, by condemnation and by prescription.

In this proceeding the present value of the easements was proven to be the sum of $3,601,493, such value being proven in accordance with the decisions of the Court of Appeals of this state which determined the value of the easements at the time they were acquired by the railway company, and which decisions now constitute a rule of property in this State.

The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhat-

364 *Objections of Chase National Bank*

tan Railway Company dated June 1, 1913, the lien of which covered the property taken, a claimant in this proceeding, makes the following objections to the Supplemental and Amended Tentative Decree:

1. The property is taken and the award is made in violation of the provisions of

(a) Article 1, Section 6 of the Constitution of the State of New York which provides that pri-
365 vate property shall not be taken for public use without just compensation;

(b) Article 1, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts; and

(c) The Fourteenth Amendment to the Constitution of the United States, Section 1 thereof, which provides that no State shall deprive any person of life, liberty or property without due process of law,

366 in that the statute authorizing this proceeding, the amount awarded in the Supplemental and Amended Tentative Decree for the property taken in this proceeding and the rule of law adopted by this court in respect thereto impair the obligation of contracts, to wit, the deeds of conveyance and the title by prescription under which the claimant held property taken in this proceeding, and in that the amount awarded in the Supplemental and Amended Tentative Decree for the property taken in this proceeding does not constitute just compensation for the property so taken and that the proceedings herein and the fact and

the amount of said award do not constitute due process of law; and this claimant hereby draws in question the constitutionality of said award and of said tentative decree and of all provisions thereof and/or of statutes or of law assumed or asserted to authorize the said award and the enforcement thereof.

2. The property is taken and the award is made in violation of

(a) the Statute (Laws of New York 1923, Chapter 635) under which this proceeding is conducted 368
which provides, among other things, that just compensation shall be awarded for the property taken;

(b) the principles of law under which compensation for private property taken for public use is to be determined, and particularly compensation for property of the kind taken in this proceeding.

in that the amount awarded in the Supplemental and Amended Tentative Decree for the property 369
taken in this proceeding does not constitute just compensation for the property so taken.

3. The said award is inadequate and insufficient in amount, and the Court erred in awarding the sum of $619,352.41 for the property taken, and should have decided, and it was error not to decide, that the just compensation for the property taken was $4,201,931 represented as follows:

(a) $3,601,493 the undisputed value of the easements of light, air and access,

(b) $80,000, the damage and loss sustained by

370 *Objections of Chase National Bank*

the Interborough Rapid Transit Company by reason of the necessity of restoring and replacing the facilities of the Third Avenue line destroyed caused by the taking of the property in the present procedure.

(c) $300,000, representing the value of the street space occupied by columns, foundations and other fixtures.

(d) $100,000, representing the value of the perpetual franchise granted to the railroad company
371 to construct and operate the railroad in East 42nd Street.

(e) $120,438, representing the value of the physical structures in the street taken in the present procedure.

4. The award in the Supplemental and Amended Tentative Decree is based upon incorrect principles of law in that the amount awarded for the easements of light, air and access is not made in accordance with the decisions of the Court of Ap-
372 peals and the principles established by those decisions, and the award does not represent the value of the easements at the date of the vesting of title, but represents their value at the time they were acquired by the railroad company. The court erred in deciding that the value of the easements should be based upon the value judicially determined at the time of their acquisition by the railroad company, and the court erred in not determining that the value of the easements should be their value at the time they were taken in the present proceeding determined in accordance with the decisions of the Court of Appeals made at the

time the easements were acquired, and in accordance with the principles established by those decisions.

The court erred in holding that the elevated railway structure taken in this proceeding should be valued as if it were taken down and scrapped, and in awarding only nominal damages therefor.

The court erred in not awarding value or damages for the franchise taken and impaired in this proceeding.

The court erred in not awarding damages for the permanent rights of occupation in the streets other than the private easements of light, air and access. 374

5. The court should have decided, and it was error not to decide, that the value of the easements of light, air and access had been determined many times by the Court of Appeals in proceedings in which the railroad, the Manhattan Railway Company, acquired such easements, and in which principles for determining the value of such easements were established, and the court should have decided, and it was error not to decide, that the present value of the easements at the time they were taken in this proceeding should have been determined in accordance with the aforesaid decisions of the Court of Appeals and the principles thereby established. 375

The court should have decided, and it was error not to decide, that the value of the physical structure in the street taken in the present proceeding should be determined, not by income allocated to the part of the railroad taken, but by the present value of the railroad structure ascertained through the cost of reconstruction less depreciation at the time the property was taken.

376 *Objections of Chase National Bank*

The court should, therefore, make the following corrections and alterations in the Supplemental and Amended Tentative Decree as to the award of compensation for the property taken:

It should increase the award from $619,352.41 to $4,201,911.

Wherefore, The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under the Second Mort-
377 gage of Manhattan Railway Company dated June 1, 1913, the lien of which covers the property taken, a claimant in this proceeding, objecting to the Supplemental and Amended Tentative Decree, prays that it may be granted a hearing on its objections and that the court may correct and alter the Decree, and for such other and further relief as may be proper.

George Welwood Murray, Attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The
378 Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company, Office and Post Office Address, 15 Broad Street, New York, N. Y.

(Duly verified by George Welwood Murray, attorney for The Chase National Bank of the City of New York, on March 23, 1932.)

## Objections of Central Hanover Bank & Trust Co.

379

New York Supreme Court, First Department.

[Same Title]

To the Honorable the Supreme Court of the State of New York.

Objections of Claimant, Central Hanover Bank and Trust Company (successor to Central Trust Company of New York), as Trustee under Consolidated Mortgage of Manhattan Railway Company, dated February 26, 1890, and Indenture Supplemental thereto dated June 13, 1899, to the Supplemental and Amended Tentative Decree, herein dated March 1, 1932, and filed with the Clerk of the County of New York, March 7, 1932.

380

The claimant, Central Hanover Bank and Trust Company, as Trustee as aforesaid, hereby objects to the Supplemental and Amended Tentative Decree of the Court in the above entitled proceeding signed on the 1st day of March, 1932, and filed with the Clerk of the County of New York on the 7th day of March, 1932, upon the following grounds:

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The claimant, Central Hanover Bank and Trust Company, as Trustee as aforesaid, is a corporation created and existing under the banking laws of the State of New York and was on the day of vesting title herein by the City of New York, December 7, 1923, the first Mortgagee of all the railroads and franchises of said Manhattan Railway Company, including all the property taken, impaired or damaged in this proceeding, and in respect of which the sum of $619,352.41 was

382 *Objections of Central Hanover Bank & Trust Co.*

awarded in and by the Supplemental and Amended Tentative Decree herein.

The property so taken consists of an elevated railway forming part of the Manhattan Railway system and the Third Avenue Line thereof, extending upon, in and over East 42nd Street in the Borough of Manhattan, City of New York, from Third Avenue to a point at or near the junction of East 42nd Street with Park Avenue, together with all the property rights, franchises and damages taken, impaired or suffered by
383 virtue of this proceeding, including the cost of reconstructing portions of the said Third Avenue Line, necessitated and required in the interest of public necessity and convenience by reason of the taking of the said spur as found and directed by the order of the Transit Commission pursuant to the special legislative acts, to wit: Chapter 788 of the Laws of 1917, Chapter 611 of the Laws of 1919 and Chapter 635 of the Laws of 1923, authorizing this proceeding.

The said elevated railway was constructed pur-
384 suant to the provisions of the Rapid Transit Act, Chapter 606 of the Laws of 1875, by the procurement of the City of New York and the franchise under which the property herein taken was acquired and possessed by the claimant Manhattan Railway Company was held to be a contract upon consideration—Mayor of The City of New York *v.* Manhattan Ry. Co., 143 N. Y. 1, and a grant of a perpetual right to the unimpaired use and occupation of the streets, avenues and public places constituting the routes of the said elevated railroads.

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Subsequent to said grant and the construction of said Railroad the Court of Appeals of this State held that certain rights in and control over the streets denominated private street easements of light, air and access included within the boundaries of the said grant were in fact vested not in the City but in the owners of property abutting upon the streets, and constituted private property within the protection of Article I, Section 6 of the Constitution of this State. Story *v.* N. Y. El. Ry. Co., 90 N. Y. 122. Subsequent to this de-

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cision the courts of this State have uniformly, and by virtue of upward of 2,000 decisions, required the acquisition by Manhattan Railway Company and by its predecessors in interest, of title to the said private easements and the payment therefor of the full actual and present value thereof measured not by the value of the railway use, but by that of the property taken.

Pursuant to said decisions the Manhattan Railway Company acquired and at the date of taking title herein possessed all of the said private property in and to 42nd Street and Third Avenue

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taken by the elevated railway structures therein by virtue of deeds of absolute conveyance of title thereto granted pursuant to purchase or court decrees by condemnation and by prescription (Hindley *v.* Manhattan Ry. Co., 185 N. Y. 335).

In this proceeding the actual and present value of the said private property in the street known as street easements of light, air and access acquired, owned and possessed as aforesaid, by the Manhattan Railway Company, was proved without contradiction or denial to be the sum of $3,601,473, if valued in accordance with the de-

cisions of the courts of this State, which constituted a rule of property, in reliance upon and by reason of the computation of which the said claimant acquired the said easements and all of them. The said sum of $3,601,473 was the admitted value at the time of the taking herein of the said private easements to the owners of property abutting upon said 42nd Street who, by virtue of this proceeding instituted by their procurement, reacquired and now possess the said easements.

389 While the nominal title to the said easements was taken in this proceeding by The City of New York, it became instantly vested thereby in the abutters, for the title of abutters to the private street easements does not arise out of grant but is implicit in the fiduciary capacity in which the City takes title to streets, and the necessary effect of the taking of the said private property from the claimants herein was to revest it in the abutting owners. The City did not attempt to controvert the value of the said private easements established in this proceeding as aforesaid, but upon

390 the trial at Extraordinary Special Term contended that their value should be measured solely in relation to the railway use, and the court then awarded, not the admitted value of the said property for the customary and available uses of said property, $3,601,473, but the sum of $750,000 based upon original costs rather than the present reproductive or exchange values and upon a use limited to railway purposes. The learned Appellate Division upon the appeal herein from the said determination adjudged that the value of the said easements should be determined "upon the basis of the value judicially determined at the time of the original acquisition of these

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rights" (229 App. Div. 630) and in and by the supplemental and amended tentative decree herein, notwithstanding undisputed proof received upon the retrial of an actual, intrinsic, market and reproductive value of $3,601,473, the value of the said property taken in this proceeding, December 7, 1923, was determined upon values judicially found to be the actual market value of the said property not at the time when the said property was taken and acquired by the City in this proceeding but when it was acquired by the claim-

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ants herein at dates averaging more than 25 years prior thereto. Upon this basis, which is wholly without constitutional sanction or legal precedent, the supplemental and amended tentative decree to which this claimant objects has awarded the sum of $539,117.41 for the said private property, excepting one parcel of great value acquired from the City itself, by virtue of its said grant upon consideration, for which nothing was awarded.

The said grant from the City of perpetual and unimpaired rights of possession and occupation in 42nd Street and the other streets, avenues and

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public places constituting the routes of the said Manhattan Railway, included in addition to the said private easements of light, air and access and the operating franchise, street rights of perpetual occupation and control (distinct from and not included in the said private easements of light, air and access) which had been held by the Court of Appeals to constitute an interest in and to a certain extent a title to the street in the nature of property. This right of occupation of street space is of great value as determined by the rules of valuation thereof established by and

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enforced by the City of New York itself, and its acquisition and the consequent freeing of the surface of the street for vehicular traffic has greatly benefited and is of value, advantage and profit to the entire area of assessment herein, as well as to the City of New York. The decision of this Court, March 1, 1932, made no award for the aforesaid perpetual right of occupation of the street by the columns and structure of the said spur or for the operating franchise and no award
395 was made for the value of the elevated railway structure other than scrap value "taken down," for which the sum of $235 was awarded. The further sum of $80,000 was awarded for the cost of reconstruction of the station at 42nd Street and Third Avenue, rendered necessary by the taking of the said railway in 42nd Street, the aggregate of all the items of the said award being the sum of $619,352.41.

Central Hanover Bank and Trust Company, as Trustee as aforesaid, makes the following objections to the Supplemental and Amended Tenta-
396 tive Decree:

1. The said award is inadequate and insufficient in amount and the court erred and adopted and applied erroneous theories of law in awarding the sum of $619,352.41 for the property taken and should have decided and it was error not to decide that the just compensation was $4,201,931, representing the following items, to wit:

(1) $3,601,493, the admitted value of the private easements.

(2) $80,000, the damage and loss by reason of the necessity of restoring and replacing the facil-

ities of the Third Avenue Line destroyed or impaired by the physical disruption of that line, consequent upon the removal of the 42nd Street spur, being a portion only of the actual restoration and replacement expenditures forced by the taking herein.

(3) $300,000, constituting the value of the street space (other than that represented by the said private easements) occupied by the columns, foundations and other structures, the removal of which admittedly and greatly increased the 398
vehicular capacity of 42nd Street and formed the sole basis of the assessment of all the property in the entire assessment district extending from 34th Street to 50th Street and from 2nd to 5th Avenues other than those properties which immediately abut upon the 42nd Street spur and which have been revested with the private street easements aforesaid.

(4) $100,000 representing the value of the operating franchises giving the said Manhattan Railway perpetual access to the most central and 399
valuable traffic producing district in the City of New York.

(5) $120,438 representing structures taken, the minimum value in evidence.

2. The said award is based upon incorrect principles of law in that the amount awarded for the said private easements of light, air and access was not based upon the reproductive or market value of the said property at the date of vesting title or measured by the uses for which it was available, and the Court erred in deciding that

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the value of the said property or any part thereof should be based upon the value judicially determined at and as of the time of its original acquisition or on the value of any part or parts thereof at any time other than the date of vesting title thereto in this proceeding, the operating value of the railway or by the availability of the said real property solely for railroad purposes and because it based its conclusion that the said private easements of light, air and access were worth only
401 $539,117.41 solely upon the judicial determination of the value of a portion only of said easements at a period remote from the date of vesting title herein and in the absence of any evidence that the value of said properties or any of them was at the time of vesting title herein the same as at the time of such judicial determinations or of any of them and notwithstanding the uncontradicted evidence that in fact the value of the said easements and each of them at the date of vesting title was several times greater than at the date of such judicial determinations, or any of such determinations, and it was error not to decide that the said
402 real property, to wit: the private easements of light, air and access must be valued as any other property and pursuant to the principles of law universally and without exception prescribed and enforced by the courts in respect of the acquisition of the same property by the said claimant and upon the basis of which similar property has universally been purchased and sold, to wit: the decreased or increased value of abutting property resulting from the loss of acquisition of the said private street easements, and the Court erred in deciding that the claimant Manhattan Railway Company and its predecessors did not

acquire and own the said private rights in and control over the street denominated easements of light, air and access, as fully and to the same extent as the owners of abutting property and that the claimants were not entitled to the full, actual and present value of the said property but only to a value limited by judicial determination of value which related to a portion only of said easements, and to dates of determination not one of which was less than 20 years prior to the date of vesting title herein.

The Court erred in holding that the property in 404
and right of control over the street constituting the said private easements of light, air and access acquired as aforesaid by the said claimant or its predecessors, were limited to a railway user, and in holding that the value of said property ceased by reason of said claimant's acquisition thereof to be measurable by its availability for other than railway uses or for the customary and former use of said property, to which it was restored by this proceeding.

3. The Court erred in holding that the prop- 405
erty taken constituting the permanent rights of occupation in the street, other than the said private easements of light, air and access, had no value.

4. The Court erred in holding that the elevated railway structure in 42nd Street should be valued as if it were taken down and scrapped, although it was an adequate and highly useful portion of an efficient and profitable railway.

5. The Court erred in not awarding any value

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or damage for the perpetual franchises taken or impaired in this proceeding on the ground that the portion of the railway taken, although part of a profitable railway, was not as a separate operating unit in itself profitable.

6. The Court erred in not awarding any value or damage for the private street easements admittedly the absolute property of claimants at the date of vesting title herein on the ground that the privately owned frontage to which they were ap-
407 purtenant at the time of the franchise grant, the construction of the railway and the date of vesting title, was for an intermediate and temporary period occupied by an intersecting street, the former Depew Place.

7. The property is taken and the award is made in violation of the provisions of

(a) Article I, Section 6 of the Constitution of the State of New York, which provides that no person shall be deprived of property without due process of law and that private property shall not
408 be taken for public use without just compensation.

(b) Article I, Section 10 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, and

(c) The Fourteenth Amendment to the Constitution of the United States, Section 1 thereof, which provides that no State shall deprive any person of life, liberty or property without due process of law, in that the statutes authorizing this proceeding, the amount awarded in the sup-

plemental and amended tentative decree for the property taken in this proceeding, and the rule of law adopted by this Court in respect thereto impair the obligation of contracts, to wit: the deeds of conveyance to and grants of the said easements to the said claimant and its predecessors and the title thereto acquired thereby and by prescription and condemnation under and by virtue of which and the law of this State and the decisions of the courts assuring the said claimants that their said easements of light, air and access were secured by contract as expressed in those decisions, the said claimant possessed the said property taken in this proceeding; and in that the amount awarded in the supplemental and amended tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken and that the proceedings herein and the fact and the amount of said award do not constitute due process of law, and this claimant hereby draws in question the constitutionality of said award and of said supplemental and amended tentative decree and of all the provisions thereof and/or of statutes or of law assumed or asserted to authorize the said award and the enforcement thereof.

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The said claimant, Manhattan Railway Company and its predecessors acquired the said easements or private rights of control in, over and to the said 42nd Street subsequent to the decisions in Story *v.* N. Y. Elevated R. R. Co., 90 N. Y. 122, and Lahr *v.* Met. R. R. Co., 104 N. Y 268, and other cases constituting a rule of property, as held in Muhlker *v* Harlem Ry. Co., 197 U. S. 544, and establishing and guaranteeing that the said private easements of light, air and access constituted

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property within the protection of constitutional provisions against the taking of private property without just compensation, and rendering said property inviolable as against attempted appropriation under legislative sanction for any purpose or to any extent whatever, without full, adequate and just compensation.

The City of New York as well as the courts of this State have heretofore uniformly recognized, adopted and enforced as a rule of property
413 the principle of the said decisions that the said property, constituting private rights in the streets denominated easements of light, air and access and acquired and possessed by the said claimant in perpetuity as aforesaid, must be acquired, valued and taxed upon the basis of their present full, adequate and exchange value in the same manner and to the same extent as any other form of real property or interest therein, People *ex rel.* Man. Ry. Co. *v.* Barker, 165 N. Y. 305, 316, and this principle of valuation has been uniformly applied in a series of decisions "unprecedented" in its magnitude "in the history of the courts,"
414 Hindley *v.* Man. Ry. Co., 185 N. Y. 335, 357, whether the said private easements have been possessed by abutting owners or the said claimant and irrespective of whether they have been devoted to railway purposes or otherwise.

8. The property is taken and the award is made in violation of the statutes, Chap. 788 of the Laws of 1917, Chap. 611 of the Laws of 1919 and Chap. 635 of the Laws of 1923, under and pursuant to which this proceeding is conducted, and in violation of due process of law and the principles of law and rules of property prescribed,

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determined and established by the laws and judicial determinations of the courts of this State under which just compensation for private property taken for public must be made and determined, in that the amount awarded in the Supplemental and Amended Decree for the property taken does not constitute just compensation therefor.

Chap. 788 of the Laws of 1917, of which Chap. 611 of the Laws of 1919 and Chap. 635 of the Laws of 1923 were amendatory, was permissive and authorized the removal of the said railway and the disposition of the property of said claimant by negotiation. The claimant Interborough Rapid Transit Company, as lessee, upon voluntary discontinuance of portions of the railroad had, as is undisputed in the record, sold and conveyed similar easements to the owner of abutting property and by the purchase of abutting properties has realized or acquired the full adequate and market value of the said easements measured by the rule of property established as aforesaid and claimants are entitled to the benefit of the principles of law under which the value of this and all similar property taken for public use has uniformly and without exception been determined, whether such property was at the time of taking devoted to railway or any other purposes whatever, to wit: its actual exchange and present value, and that the constitutional prohibition against the taking of private property without just compensation was at the date of vesting title herein as applicable to the said private easements as when the same property was taken and

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acquired for full and just compensation (Story *v.* N. Y. El. Ry. Co., *supra*).

9. The court should have decided and it was error not to decide that the portion of the sum expended in reconstructing the Third Avenue Line and the station thereof at Third Avenue and 42nd Street, necessitated by the taking of the said spur, and amounting as found by the court, to $80,000, should be awarded.

The Court should therefore increase the total
419 award from $619,352.41 to $4,201,931.

Wherefore, Central Hanover Bank and Trust Company, as Trustee as aforesaid, a claimant in this proceeding, prays that it may be granted a hearing on its objections and that the Court may correct and alter the supplemental and amended tentative decree and for such other and further relief as may be proper.

Davies, Auerbach & Cornell, Attorneys for Claimant, Office and Post Office Address, No. One
420 Wall Street, Borough of Manhattan, City of New York.

(Duly verified by F. Wolfe, Assistant Vice-President of Central Hanover Bank and Trust Company, on March 28, 1932.)

**Objections of Bowman Biltmore Hotels Corp'n (Hotel Commodore and Hotel Biltmore), *et al.*** 421

Supreme Court, New York County.

[Same Title]

To the Honorable Supreme Court of the State of New York.

Bowman Biltmore Hotels Corporation whose post office address is 33 West 43d Street, Borough of Manhattan, New York City, being the lessee, and liable for a portion of the assessments herein, of the real property (location of Hotel Commodore and Hotel Biltmore) situated in the Borough of Manhattan, and described as follows: 422

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 30 | 1280 | 14 | $129,470.87 |
| 20 | 1278 | 1854 | 2,435.18 |

Bates-Bowman Corporation whose post office address is 112 Park Avenue, Borough of Manhattan, New York City, being the lessee, and liable for the assessment herein of the real property (location of the Murray Hill Hotel) situated in the Borough of Manhattan, and described as follows: 423

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 27 | 1280 | 509 | $1,825.10 |

One Twenty Park Avenue Realty Corporation

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whose post office address is 100 East 42nd Street, Borough of Manhattan, New York City, being the owner and liable for the assessment, of real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 33 | 1276 | 54 | $16,210.28 |

425 Corn Exchange Bank, whose post office address is 13 William Street, Borough of Manhattan, New York City, being the lessee, and liable for the assessments herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 31 | 1297 | 21 | $23,532.37 |
| 6 | 1277 | 4 | 1,874.03 |
| 7 | 1277 | 5 | 1,558.94 |
| 67½ | 1277 | 1859A | 52.00 |

426 The Bowery Savings Bank whose post office address is 110 East 42nd Street, Borough of Manhattan, New York City, being the owner and liable for the assessment herein, of the real property situated in the Borough of Manhattan and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 63 | 1296 | 56 | $49,007.80 |
| 61 | 1296 | 57 | 23,155.30 |

Lincoln Forty Second Street Corporation whose post office address is 60 East 42nd Street, Borough of Manhattan, New York City, being the Owner, and liable for the assessment herein of

the real property situated in the Borough of Manhattan and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 42 | 1276 | 53 | $20,805.12 |

Carbide & Carbon Realty Co., Inc., whose post office address is 30 East 42nd Street, Borough of Manhattan, New York City, being the owner, and liable for the assessment herein of the real property situated in the Borough of Manhattan and described as follows: 428

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 58 | 1276 | 49 | $14,665.25 |
| 12 | 1276 | 582 | 129.11 |
| 14½ | 1276 | 588 | 76.27 |
| 14 | 1276 | 587 | 271.40 |
| 16 | 1276 | 586 | 121.83 |
| 16½ | 1276 | 585 | 121.83 |
| 17 | 1276 | 584 | 121.83 |

Vanderbilt Avenue Building Corporation, whose post office address is 51 East 42nd Street, Borough of Manhattan, New York City, being the lessee, and liable for a portion of assessment herein, of the real property situated in the Borough of Manhattan, and described as follows: 429

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 27 | 1277 | 12 | $8,019.41 |

D. A. Schulte, Inc., whose post office address is 385 Broadway, Borough of Manhattan, New York City, being the lessee, and liable for the assessment herein of the real property situated in

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the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 36 | 1297 | 22 | $1,078.30 |
| 33 | 1297 | 26 | 18,830.93 |

and being liable for a portion of the assessment of real property situated in the Borough of Manhattan, and described as follows:

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| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 51 | 1276 | 51 | $13,122.58 |

John Curry Real Estate, Inc., whose post office address is c/o J. Clifford McChristie, Esq., 420 Lexington Ave., Borough of Manhattan, New York City, being the owner and liable for the assessment herein of real property situated in the Borough of Manhattan, and described as follows:

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| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 49 | 1315 | 66 | $4,218.60 |

J. Chr. G. Hupfel Co., Inc., whose post office address is 229 East 38th Street, Borough of Manhattan, New York City, being the owner, and liable for the assessments herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 50 | 918 | 1159 | $35.37 |
| 48 | " | 1160 | 46.60 |
| 47 | " | 1161 | 29.95 |
| 46 | " | 1162 | 29.95 |

| | | | |
|---|---|---|---|
| 45 | " | 1163 | 33.28 |
| 11 | 919 | 245 | 36.67 |
| 12 | " | 246 | 33.08 |
| 14 | " | 248 | 33.08 |
| 15 | " | 249 | 33.08 |
| 16 | " | 231 | 410.80 |
| 47 | " | 226 | 42.83 |
| 46 | " | 227 | 69.87 |
| 44 | " | 228 | 44.02 |
| 43 | " | 229 | 44.02 |
| 42 | " | 230 | 51.35 |

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Rogers Peet Company, whose post office address is 842 Broadway, Borough of Manhattan, New York City, being lessee, and liable for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 1 | 1276 | 43 | $4,625.53 |

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Princeton Club of New York whose post office address is 39 East 39th Street, Borough of Manhattan, New York City, being the owner, and liable for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 33 | 869 | 537 | $58.68 |

News Syndicate Co., Inc., whose post office address is 220 East 42nd Street, Borough of Manhattan, New York City, being the owner, and lia-

436 *Objections of Bowman Biltmore Hotels Corp.*

ble for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 41 | 1315 | 70 | $1,207.06 |
| 40 | " | 71 | 1,116.69 |
| 39 | " | 72 | 1,089.68 |
| 38 | " | 73 | 1,075.76 |
| 37 | " | 74 | 1,060.10 |
| 437 36 | " | 77 | 1,501.32 |
| 35 | " | 78 | 964.28 |
| 34 | " | 79 | 925.79 |
| 33 | " | 80 | 887.22 |
| 13 | " | 93 | 111.06 |
| 19 | " | 91 | 476.81 |
| 14 | " | 92 | 124.70 |

F. & S. Rockaway Restaurant, Inc., whose post office address is 159 East 42nd Street, Borough of Manhattan, New York City, being the lessee, and liable for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

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| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 32½ | 1297 | 23 | $12,146.95 |

Tishman Realty and Construction Co., Inc., whose post office address is 136 East 57th Street, Borough of Manhattan, New York City, being the owner, and liable for the assessment herein of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 23 | 1298 | 1957 | $131.20 |
| 25 | " | 1959 | 99.42 |
| 49 | " | 1947 | 83.55 |

The Oceanic Investing Corporation, whose post office address is 15 Broad Street, Borough of Manhattan, New York City, being the owner and which is or may be charged for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows: 440

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 69 | 1276 | 41 | $6,950.69 |
| 68 | 1277 | 1858 | 59.66 |
| 67 | 1277 | 1859 | 97.16 |
| 69 | 1281 | 1794 | 37.77 |
| 72 | 1281 | 1797 | 44.57 |
| 6 | 1277 | 4 | 1,874.03 |
| 7 | 1277 | 5 | 1,558.94 |
| 67½ | 1277 | 1859A | 52.00 |

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Borden Realty Corporation, whose post office address is 350 Madison Avenue, Borough of Manhattan, New York City, being the owner or lessee and which is or may be charged for assessments herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 58 | 1279 | 1833 | $60.49 |
| 57 | " | 1834 | 96.36 |
| 59 | " | 1830 | 290.87 |
| 17½ | " | 1833 | 77.63 |

442 *Objections of Bowman Biltmore Hotels Corp.*

R-W Realty Company, Inc., whose post office address is 555 Fifth Avenue, Borough of Manhattain, New York City, which may be liable for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 62 | 1276 | 48 | $2,064.18 |

443 Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, Deceased, whose post office address is c/o Eastman & Eastman, Esqs., 225 Broadway, Borough of Manhattan, New York City, being the trustees and charged with the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 1 | 1316 | 29 | $3,769.39 |
| 444 3 | 1316 | 28 | 938.02 |

Childs Company whose post office address is 200 Fifth Avenue, Borough of Manhattan, New York City, being the owner or lessee, and charged with the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 65 | 1276 | 45 | $1,959.42 |
| 66 | 1276 | 44 | 1,923.57 |
| 3 | 865 | 693 | 32.36 |

J. Chr. G. Hupfel, who resides at 148 East 37th St., Borough of Manhattan, New York City, being the owner and liable for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 55 | 892 | 1047 | $26.08 |

J. Homer Cudmore whose post office address is 216 East 39th St., Borough of Manhattan, New York City, being the owner, and charged with the assessment herein, of the real property situated in the Borough of Manhattan and described as follows: 446

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 51 | 919 | 222 | $39.12 |

Anahma Realty Corporation whose post office address is 52 Vanderbilt Avenue, Borough of Manhattan, New York City, being liable for a portion of the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows: 447

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 51 | 1276 | 51 | $13,122.58 |

William Volk, whose post office address is 51 Cortlandt Street, Borough of Manhattan, New York City, being the owner, and liable for the assessment herein, of the real property situated in the Borough of Manhattan, and described as follows:

448 *Objections of Bowman Biltmore Hotels Corp.*

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 40 | 1296 | 64 | $31,306.60 |
| 37 | 1296 | 65 | 3,405.63 |

against each of which properties a tentative assessment in the above amounts has been levied in these proceedings, appearing by Page & Page, Attorneys, hereby severally object to the supplemental and amended tentative decree herein and the award and assessment thereof, and each for his
449 or its objections as to his or its said premises (without waiving any other objections) respectively presents upon information and belief the following:

(1) That the amount of the assessment proposed to be levied on the premises of each of your objectors above named exceeds the value of the benefit and advantages derived by his or its premises by reason of this proceeding.

(2) That the award of said supplemental and amended tentative decree, and the assessment
450 based thereon against the premises of each of your objectors are excessive, contrary to the evidence and contrary to law as to his or its said premises.

(3) That said award is contrary to law for the further and additional reason that the claimants, The Manhattan Elevated Railway Company and the Interborough Rapid Transit Company, as lessee, are entitled to no compensation for the so-called private easements of light, air and access because the right to impair the said private easements could continue only so long as the operation of said Elevated Spur might be found

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to be a matter of public necessity and convenience. That the said right to impair the easements of the abutting property owners on 42nd Street between Park and Third Avenues was terminated by the finding and decision of the Public Service Commission for the First District on or about the 22nd day of April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements belonging to the Claimants in said East 42nd Street.

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(4) That the said award contains the amount of $205,387.98 as the value of the so-called rights to impair light, air and access acquired by the Railroad by prescription and for which the Railroad paid nothing, which amount is based upon an erroneous theory, contrary to the Appellate Division's opinion and contrary to law.

(5) That the objections to said supplemental and amended tentative decree and the award therein filed herein with the Clerk of the County of New York on or about March 9th, 1932, by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of each of the above named objectors.

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(6) That said award should be vacated and each of said assessments cancelled and set aside in whole or in part.

Wherefore, each of the objectors above named requests an opportunity to be heard in support of his or its objections.

454 *Objections of Pershing Square Building Corp.*

Dated, New York, March 24th, 1932.

Page & Page, Attorneys for Objectors above named, Office and Post Office Address, 55 Liberty Street, Borough of Manhattan, New York City.

(Duly verified by William H. Page, one of the attorneys for the above named objectors, on March 25, 1932.)

To: Clerk of the County of New York. Corpo-
455 ration Counsel of the City of New York, Municipal Building, New York, N. Y.

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## Objections of Pershing Square Building Corporation

Supreme Court, New York County.

[Same Title]

To the Honorable Supreme Court of the State
456 of New York:

Pershing Square Building Corporation, a corporation organized and existing under the laws of the State of New York, with its post office address and principal place of business at No. One Pershing Square, Borough of Manhattan, City of New York, being the owner and liable for a portion of the assessments herein of the real property situated at No. One Pershing Square, Borough of Manhattan, City of New York, and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 1 | 1296 | 55 | $59,002.99 |

against which property a tentative assessment in the above amount has been levied in these proceedings, appearing by Edmund W. Van Voorhis, hereby objects to the supplemental and amended tentative decree herein and the award and assessment thereof, and for its objections as to its said premises (without waiving any other objections), respectfully presents, upon information and belief, the following:

(1) That the amount of the assessment proposed to be levied on the premises of your ob- 458
jector above named exceeds the value of the benefit and advantages derived by its premises by reason of this proceeding.

(2) That the award of said supplemental and amended tentative decree, and the assessment based thereon against the premises of your objector are excessive, contrary to the evidence and contrary to law as to its said premises.

(3) That said award is contrary to law for the further and additional reason that the claimants, The Manhattan Elevated Railway Company and 459
the Interborough Rapid Transit Company, as lessee, are entitled to no compensation for the so-called private easement of light, air and access because the right to impair the said private easements could continue only so long as the operation of said Elevated Spur might be found to be a matter of public necessity and convenience. That the said right to impair the easements of the abutting property owners on 42nd Street beween Park and Third Avenues was terminated by the finding and decision of the Public Service Commission for the First District on or about the 22nd day of

460 *Objections of Pershing Square Building Corp.*

April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements belonging to the claimants in said East 42nd Street.

(4) That the said award contains the amount of $205,387.98 as the value of the so-called rights to impair light, air and access acquired by the Railroad by prescription and for which the Rail-
461 road paid nothing, which amount is based upon an erroneous theory, contrary to the Appellate Division's opinion and contrary to law.

(5) That the objections to said supplemental and amended tentative decree and the award therein filed herein with the Clerk of the County of New York on or about March 9, 1932, by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of this objector.

462 (6) That said award should be vacated and each assessment cancelled and set aside in whole or in part.

Wherefore, the objector above named requests an opportunity to be heard in support of its objections.

Dated, New York, March 21, 1932.

Edmund W. Van Voorhis, Attorney for Objector above named, Office and P. O. Address, 511 Fifth Avenue, Borough of Manhattan, New York City.

*Objections of Robert Walton Goelet* 463

(Duly verified by S. D. Leidesdorf, President of Pershing Square Building Corporation, on March 22, 1932.)

To: Clerk of the County of New York; Corporation Counsel of the City of New York, Municipal Building, New York, N. Y.

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## Objections of Robert Walton Goelet

Supreme Court, New York County. 464

[Same Title]

To the Honorable Supreme Court of the State of New York:

Robert Walton Goelet, whose post-office address is 18 East 47th Street, Borough of Manhattan, City, County and State of New York, is the owner of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by the supplemental and amended tentative decree made herein and filed in the office of the Clerk of New York County on the 7th day of March, 1932: 465

| Block No. | Lot No. | Street No. |
|---|---|---|
| 1296 | 20 | 378-87 Lexington Avenue and 132 East 42nd Street |
| | 46 | 128-46 East 42nd Street |
| | 22 | 375 & 377 Lexington Avenue |
| 1284 | 1 | 1 East 48th Street |
| 1283 | 6 | 3 East 47th Street |
| | 67 | 4 East 48th Street |
| | 69 | 591 Fifth Avenue |
| | 71 | 589 Fifth Avenue |

466 *Objections of Robert Walton Goelet*

| | | |
|---|---|---|
| 1282 | 17 | 17-29 East 46th Street |
| 1281 | 60 | 18 East 46th Street |
| 1321 | 1 | 757 Third Avenue |
| 1321 | 2 | 759 Third Avenue |
| | 3 | 761 Third Avenue |
| | 4 | 763 Third Avenue |
| | 5 | 205-13 East 47th Street |
| | 4½ | 203 East 47th Etreet |
| | 10 | 215 East 47th Street |
| | 50½ | 765 Third Avenue |
| 1299 | 27 | 147 East 44th Street |
| | 28 | 149 East 44th Street |
| | 29 | 151 East 44th Street |
| | 44 | 140 East 45th Street |
| | to | 142 East 45th Street |
| | 47 | 144 East 45th Street |
| | 46½ | 146 East 45th Street |
| | | 148 East 45th Street |

467

Said Robert Walton Goelet hereby objects to said supplemental and tentative decree and to the award and assessment thereof, and respectfully presents, upon information and belief, the following:

468

(1) That the amount of the assessment proposed to be levied on each of the above premises exceeds the value of the benefit and advantages to be derived by him on his premises by reason of this proceeding.

(2) That the award of said supplemental and amended tentative decree, and the assessment based thereon against the premises of your objector is excessive, contrary to the evidence and contrary to law as to his said premises.

(3) That said award is contrary to law for the

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further and additional reason that the claimants, The Manhattan Elevated Railway Company and the Interborough Rapid Transit Company, as lessee, are entitled to no compensation for the so-called private easements of light, air and access because the right to impair the said private easements could continue only so long as the operation of said Elevated Spur might be found to be a matter of public necessity and convenience. That the said right to impair the easements of the abutting property owners on 42nd Street between Park and Third Avenues was terminated by the finding and decision of the Public Service Commission for the First District on or about the 22nd day of April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements belonging to the claimants in said East 42nd Street.

470

(4) That the said award contains the amount of $205,387.98 as the value of the so-called rights to impair light, air and access acquired by the Railroad by prescription and for which the Railroad paid nothing, which amount is based upon an erroneous theory, contrary to the Appellate Division's opinion and contrary to law.

471

(5) That the objections to said supplemental and amended tentative decree and the award therein filed herein with the Clerk of the County of New York on or about March 9, 1932, by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of the above named objector.

472 *Objections of National City Bank et al.*

(6) That said award should be vacated and each of said assessments cancelled and set aside in whole or in part.

Wherefore, the objector above named requests an opportunity to be heard in support of his objections.

Dated, New York, March 23, 1932.

Shearman & Sterling, Attorneys for Objector
473 above named, Office and Post Office Address, 55 Wall Street, Borough of Manhattan, New York City.

(Duly verified by Philip A. Carroll, Attorney for Robert Walton Goelet, on March 23, 1932.)

To: Clerk of the County of New York; Corporation Counsel of the City of New York, Municipal Building, New York, N. Y.

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474 **Objections of National City Bank of New York and National City Realty Corporation**

Supreme Court, New York County.

[Same Title]

To the Honorable Supreme Court of the State of New York:

The National City Bank of New York and National City Realty Corporation, whose post office addresses are each No. 55 Wall Street, Borough of

475

Manhattan, City, County and State of New York, are, respectively, the owner and lessee of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by the supplemental and amended tentative decree made herein, and filed in the office of the Clerk of New York County on the 7th day of March, 1932:

| Block No. | Lot No. | Street No. |
|---|---|---|
| 1277 | 14 | 15-17 East 42nd Street |

476

hereby object, and each for itself objects, to said supplemental and tentative decree and to the award and assessment thereof, and each for its objection respectfully presents, upon information and belief, the following:

(1) That the amount of the assessment proposed to be levied on the above premises exceeds the value of the benefit and advantages to be derived by these objectors, and each of them, or by said premises by reason of this proceeding.

477

(2) That the award of said supplemental and amended tentative decree, and the assessment based thereon against the aforesaid premises is excessive, contrary to the evidence and contrary to law as to said premises.

(3) That said award is contrary to law for the further and additional reason that the claimants; The Manhattan Elevated Railway Company and the Interborough Rapid Transit Company, as lessees are entitled to no compensation for the so-called private easements of light, air and access because the right to impair the said private easements could continue only so long as the operation of said Elevated Spur might be found to be a

478 *Objections of National City Bank et al.*

matter of public necessity and convenience. That the said right to impair the easements of the abutting property owners on 42nd Street between Park and Third Avenues was terminated by the finding and decision of the Public Service Commission for the First District on or about the 22nd day of April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements belonging to the claimants in said East
479 42nd Street.

(4) That the said award contains the amount of $205,387.98 as the value of the so-called rights to impair light, air and access acquired by the Railroad by prescription and for which the Railroad paid nothing, which amount is based upon an erroneous theory, contrary to the Appellate Division's opinion and contrary to law.

(5) That the objections to said supplemental and amended tentative decree and the award therein filed herein with the Clerk of the County
480 of New York on or about March 9, 1932, by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of the above named objectors.

(6) That said award should be vacated and said assessment cancelled and set aside in whole or in part.

Wherefore, the objectors above named request an opportunity to be heard in support of their objections.

*Objections of 145 East 41st Street Corporation* 481

Dated, New York, March 23, 1932.

Shearman & Sterling, Attorneys for Objectors The National City Bank of New York and National City Realty Corporation, 55 Wall Street, New York City.

(Duly verified by Nathan C. Lenfestey, Cashier of The National City Bank of New York, on March 23, 1932.)

(Duly verified by Wallace Reynolds, Assistant Vice-President of National City Realty Corporation, on March 23, 1932.) 482

To: Clerk of the County of New York; Corporation Counsel of the City of New York, Municipal Building, New York, N. Y.

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## Objections of 145 East 41st Street Corporation

Supreme Court, New York County. 483

[Same Title]

To the Honorable Supreme Court of the State of New York:

145 East 41st Street Corporation, whose post office address is No. 55 Wall Street, Borough of Manhattan, City, County and State of New York, is the owner of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by

484 *Objections of 145 East 41st Street Corporation*

the supplemental and amended tentative decree made herein and filed in the office of the Clerk of New York County on the 7th day of March, 1932:

| Block No. | Lot No. | Street No. |
|---|---|---|
| 1296 | 25 | 137-143 East 41st Street |
| 1296 | 30 | 145 East 41st Street |
| 1296 | 31 | 147 East 41st Street |
| 1296 | 32 | 149 East 41st Street |
| 1296 | 35 | 644 Third Avenue |

485 Said 145 East 41st Street Corporation hereby objects to said supplemental and tentative decree and to the award and assessment thereof, and respectfully presents, upon information and belief, the following:

(1) That the amount of the assessment proposed to be levied on each of the above premises exceeds the value of the benefit and advantages to be derived by it or its premises by reason of this proceeding.

(2) That the award of said supplemental and
486 amended tentative decree, and the assessment based thereon against the premises of your objector is excessive, contrary to the evidence and contrary to law as to its said premises.

(3) That said award is contrary to law for the further and additional reason that the claimants, The Manhattan Elevated Railway Company and the Interborough Rapid Transit Company, as lessee, are entitled to no compensation for the so-called private easements of light, air and access because the right to impair the said private easements could continue only so long as the opera-

487

tion of said Elevated Spur might be found to be a matter of public necessity and convenience. That the said right to impair the easements of the abutting property owners on 42nd Street between Park and Third Avenues was terminated by the finding and decision of the Public Service Commission for the First District on or about the 22nd day of April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements belonging to the Claimants in said East 42nd Street.

488

(4) That the said award contains the amount of $205,387.98 as the value of the so-called rights to impair light, air and access acquired by the Railroad by prescription and for which the Railroad paid nothing, which amount is based upon an erroneous theory, contrary to the Appellate Division's opinion and contrary to law.

(5) That the objections to said supplemental and amended tentative decree and the award therein filed herein with the Clerk of the County of New York on or about March 9, 1932, by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of the above named objector.

489

(6) That said award should be vacated and each of said assessments cancelled and set aside in whole or in part.

Wherefore, the objector above named requests

490 *Objections of Manhattan Storage & Warehouse Co.*

an opportunity to be heard in support of its objections.

Dated, New York, March 23, 1932.

Shearman & Sterling, Attorneys for Objector above named, Office and Post Office Address, 55 Wall Street, Borough of Manhattan, New York City.

(Duly verified by Walter K. Earle, one of the attorneys for 145 East 41st Street Corporation,
491 on March 23, 1932.)

To: Clerk of the County of New York. Corporation Counsel of the City of New York, Municipal Building, New York, N. Y.

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## Objections of Manhattan Storage and Warehouse Co.

Supreme Court, New York County.

492 [Same Title]

To the Honorable Supreme Court of the State of New York:

The Manhattan Storage and Warehouse Company, whose post office address is 80th Street and Third Avenue, Borough of Manhattan, New York City, being the owner and liable for the assessment of real property, situated in the Borough of Manhattan and described as follows:

| Lot Number | Block Number | Map Number | Amount |
|---|---|---|---|
| 14 | 1296 | 58 | $59,061.92 |

against which property a tentative assessment in the above amount has been levied in these proceedings, appearing by Middlebrook & Sincerbeaux, Attorneys, hereby objects to the supplemental and amended tentative decree herein and the award and assessment thereof, and for its objections as to its said premises (without waiving any other objections) respectfully presents upon information and belief the following:

(1) That the amount of the assessment proposed to be levied on the premises of your objector above named exceeds the value of the benefit and advantages derived by its premises by reason of this proceeding. 494

(2) That the award of said supplemental and amended tentative decree, and the assessment based thereon against the premises of your objector is excessive, contrary to the evidence and contrary to law as to its said premises.

(3) That said award is contrary to law for the further and additional reason that the claimants, The Manhattan Elevated Railway Company and the Interborough Rapid Transit Company, as lessee, are entitled to no compensation for the so-called private easements of light, air and access because the right to impair the said private easements could continue only so long as the operation of said Elevated Spur might be found to be a matter of public necessity and convenience. That the said right to impair the easements of the abutting property owners on 42nd Street between Park and Third Avenues was terminated by the finding and decision of the Public Service Commission for the First District on or about the 495

496 *Objections of Manhattan Storage & Warehouse Co.*

22nd day of April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements belonging to the Claimants in said East 42nd Street.

(4) That the said award contains the amount of $205,387.98 as the value of the so-called rights to impair light, air and access acquired by the Railroad by prescription and for which the Rail-
497 road paid nothing, which amount is based upon an erroneous theory, contrary to the Appellate Division's opinion and contrary to law.

(5) That the objections to said supplemental and amended tentative decree and the award therein filed herein with the Clerk of the County of New York on or about March 9th, 1932, by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of the above named objector.

498 (6) That said award should be vacated and each of said assessments cancelled and set aside in whole or in part.

Wherefore, the objector, The Manhattan Storage and Warehouse Company, requests an opportunity to be heard in support of its objections.

Dated, New York, March 28th, 1932.

Middlebrook & Sincerbeaux, Attorneys for Objector The Manhattan Storage and Warehouse Company, Office and Post Office Address: 57 William Street, Borough of Manhattan, New York City.

(Duly verified by John G. Neeser, President of The Manhattan Storage and Warehouse Company, on March 28, 1932.)

To: Clerk of the County of New York. Arthur J. W. Hilly, Esq., Corporation Counsel of the City of New York, Municipal Building, New York, N. Y.

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## Objections of Cooper Union for Advancement of Science and Art 500

Supreme Court, New York County.

[Same Title]

Cooper Union for the Advancement of Science and Art, a party interested in this proceeding and in certain of the real property assessed and affected thereby as owner thereof, hereby appears herein by Parsons, Closson & McIlvaine, its attorneys, and objects to the award and the assessments set forth and contained in the Tentative Decree herein filed in the New York County Clerk's Office on March 7, 1932, and alleges, upon information and belief: 501

First.—Your objector, Cooper Union for the Advancement of Science and Art is a corporation of the State of New York, incorporated by Special Act of the Legislature of the State of New York, known as Chapter 279 of the Laws of 1859; and its post office address is Cooper Square, Borough of Manhattan, City of New York, N. Y.

Second.—The real property owned by your ob-

502 *Objections of Cooper Union*

jector and affected by this proceeding is that parcel of land bounded and described as follows:

Commencing at the northeast corner of 42nd Street and Lexington Avenue running thence northwardly along the easterly side of Lexington Avenue to the southerly line of 43rd Street; thence eastwardly along the same two hundred and five (205) feet; thence southerly parallel with Lexington Avenue twenty-eight (28) feet seven (7) inches; thence southwestwardly along the cen-
503 ter line of what was formerly known as the old Eastern Post Road to the northerly side of 42nd Street, and thence westwardly along the same one hundred sixty-seven (167) feet two (2) inches to the point of beginning.

Said premises being designated on the tax map of the City of New York as Lot 23 of Block 1297 and on the assessment or benefit map herein as Lot 15.

The assessment against the said premises of your objector, as fixed by the Tentative Decree herein is the sum of $81,632.78.

504 Third.—For its objections and the grounds thereof your objector states as follows:

1. The compensation and award to be made to the owner or owners of the real estate and/or other property acquired herein has not been correctly or justly estimated by the Court, and the amount thereof awarded to the Manhattan Railway Company and/or other owner or owners as stated in said Tentative Decree is incorrect, unjust and excessive, and is greater than the loss and damage sustained;

2. The award is not supported by the weight of evidence and is contrary to the evidence and contrary to law;

3. The award contains elements of damage which ought not properly or legally to be included; it includes damages for property or rights not taken or diminished in value by this proceeding; it includes damages for property and rights not owned by the Manhattan Railway Company or by any other person or corporation; and it is excessive and invalid in so far as it includes such elements or any of them; 506

4. The award is excessive and invalid to the extent that it includes damages for the value of the right of the Manhattan Railway Company to maintain and operate an elevated railroad within the area included in this proceeding as against the objections of abutting owners; such right was a part of the franchise and according to the weight of evidence had no value and the valuation thereof by the Court as included in the award as fixed was based upon an erroneous theory of law and is contrary to the evidence and weight of evidence; 507

5. The award as fixed by the Court includes not merely the loss and damage sustained by the Manhattan Railway Company and/or other owner or owners whose property and rights have been acquired in this proceeding, but includes also an amount based upon the benefit and advantage alleged to accrue to your objector's property above described, and the other properties assessed in this proceeding; and to that extent the award is unjust, excessive, illegal and invalid, and the evidence as

508 *Objections of Cooper Union*

to the extent of such benefit and advantage was incompetent and was improperly admitted;

6. A just and equitable estimate of the assessment of the value of the benefit and advantage of the improvement to the owners within the area of assessment has not been made in proportion to the amount of benefit received;

7. The total amount of the assessments levied against all the properties lying within the area of
509 assessment is in excess of the amount of the awards, with the interest thereon and the costs and expenses of this proceeding, and the assessment against the property of your objector is to this extent excessive; the total amount of the assessments in the proceeding exceeds the total benefit and advantage to all the properties assessed; and the amount of the assessment against your objector's property exceeds the benefit and advantage accruing to such property by reason of the improvement;

8. The City of New York is not authorized by
510 law to maintain this proceeding in order to acquire the right to extinguish the rights, easements and franchises of the Manhattan Railway Company in connection with said elevated railroad structures, and no assessment may lawfully be made against your objector's property for any compensation, loss or damage in connection therewith, and in so far as Chapter 788 of the Laws of 1917 as amended by Chapter 611 of the Laws of 1919, and Chapter 635 of the Laws of 1923 may be held to authorize the same, said statutes are unconstitutional. Whatever right the Manhattan Railway Company had to impair the easements of

light, air and access or other street or property easements appurtenant to your objector's property was not susceptible of condemnation or acquisition by the City of New York in this proceeding, and in so far as said statutes may be held to authorize the same said statutes are unconstitutional and void. The said elevated railroad structure, tracks, stations, platform and stairways constituted a public nuisance mantained by the said Manhattan Railway Company or other person or corporation, and they were so declared by the 512
lawfully constituted authority in that behalf, and not created or authorized by your objector or any other owner of property assessed in this proceeding, and their removal constituted a lawful abatement of such nuisance; and in so far as said statutes may be held to authorize the removal of said structures by condemnation and the payment of compensation therefor and the assessment of your objector's property therefor, said statutes are unconstitutional and void. The easements of light, air and access and street and property easements were not an appurtenance to said elevated rail- 513
road structures or to the franchises of the said Manhattan Railway Company or other owner thereof, and no proceeding by The City of New York to acquire or condemn the same could lawfully be brought or maintained, but said easements were appurtenant solely to the adjacent properties to which they automatically revived and were restored in their original undiminished form and extent upon the removal of such structures;

9. The assessment proposed by the tentative decree to be levied against your objector's property, being a charge for the abatement of a public

nuisance and/or an assessment in part for the value of property not taken or diminished in value by the improvement, constitutes a taking of the property of this objector without due process of law, contrary to the constitution of this State and of the United States.

Cooper Union for the Advancement of Science and Art, Objector, by Edward S. Rehm, Its Secretary.

515 Parsons, Closson & McIlvaine, Attorneys for Objector, Office and P. O. Address, No. 52 William Street, Borough of Manhattan, New York, N. Y.

(Duly verified by Edward L. Rehm, Secretary of Cooper Union for the Advancement of Science and Art, on March 24, 1932.)

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## Testimony Taken Before Supreme Court

516 Supreme Court, New York County, Special Term, Part VI

[Same Title]

Before—Hon. Phoenix Ingraham, J.

New York, February 1, 1932.

Appearances: Arthur J. W. Hilly, Esq., by John Lehman, Esq., of Counsel, for the City of New York. Messrs. Page & Page (William H. Page and John G. Dalton, Esqs., of Counsel), representing Bowman Biltmore Hotels Corpora-

tion, Bates-Bowman Corporation, One Twenty Park Avenue Realty Corporation, Corn Exchange Bank, The Bowery Savings Bank, Lincoln Forty-Second Street Corporation, Carbide & Carbon Realty Co., Inc., Vanderbilt Avenue Building Corporation, D. A. Schulte, Inc., John Curry Real Estate, Inc., J. Chr. G. Hupfel Co., Inc., Rogers Peet Company, Princeton Club of New York, News Syndicate Co., Inc., F. & S. Rockaway Restaurant, Inc., Tishman Realty and Construction Co., Inc., The Oceanic Investing Corporation, 518
Borden Realty Corporation, R-W Realty Company, Inc., Trustees of the Estate of James Kelley, Deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Anahma Realty Corporation, William Volk. Messrs. Shearman & Sterling, by William H. Jeffers, Esq., of Counsel, representing Robert Walton Goelet, *et al.* Jacob Aronson, Esq., for the New York & Harlem R. R. Co., and New York State Realty & Terminal Co. Messrs. Parsons, Closson & McIlvaine, by Elwood Thomas, Esq., of Counsel, for the Cooper Union for the Advancement of Science and Art. Messrs. 519
Middlebrook & Sincerbeaux, by F. E. Sprower, Esq., of Counsel, for Manhattan Storage & Warehouse Co. Edmund W. Van Voorhis, Esq., by Herbert H. Maass, Esq., of Counsel, for Pershing Square Building Corporation. George Welwood Murray, Esq., Attorney for Chase National Bank as successor to the Equitable Trust Company of New York. William Roberts, Esq., for Manhattan Railway Company. James L. Quackenbush, Esq., by J. Osgood Nichols, Esq., of Counsel for Interborough Rapid Transit Co., and Messrs. Davies, Auerbach & Cornell, by H. S. McCollum, Esq., of Counsel, for Central Han-

520 *Testimony Taken Before Supreme Court*

over Bank & Trust Co., as Trustee under Manhattan Railway Co., 1st mortgage.

Mr. Lehman: May it please the Court, the Corporation Counsel appears for the City of New York in this condemnation proceeding; and for the sake of brevity we have a statement of the matter to be submitted to your Honor which has been agreed upon, and I will read it so as to be accurate about every word of it, since everybody is interested in having it accurately stated.

521 Mr. Nichols: We are all agreed upon the form of it.

Mr. Lehman (Reading): "This is a condemnation proceeding instituted by The City of New York, pursuant to the special statutory provisions of Chapter 788 of the Laws of 1917, Chapter 611 of the Laws of 1919 and Chapter 635 of the Laws of 1923, and Title Four of Chapter Seventeen of the Greater New York Charter, which title and Chapter of the Charter relate to the condemnation of real property for the purposes of streets, parks, etc. to take and remove the

522 42nd Street elevated railway spur between Park and Third Avenues.

The spur structure was erected and operated by the Manhattan Railway Company as part of its elevated railway system under the Rapid Transit Act of 1875 (Chap. 606, Laws 1875) and was operated by shuttle trains at the time of the taking.

Under the special statutes mentioned, it was a condition of the exercise of the right to condemn that the Public Service Commission should first determine and certify that the tracks, structure, etc. of the elevated railway spur were no longer

necessary for the public service, or that they constituted an impediment and obstruction to the public use of the street. The Public Service Commission did so determine and certify and the Board of Estimate and Apportionment subsequently directed these proceedings to be taken and established an area of assessment.

The rights and property to be acquired in the proceeding are specified in detail in its title in the opinion of the Appellate Division herein (229 App. Div. 617) and the proceeding is usually described as one to acquire the 42nd Street elevated 524 railway spur.

The claimants are the Manhattan Railway Company as owner, the Interborough Rapid Transit Company as lessee under a lease from the Manhattan Railway Company for a period of 999 years from 1875, The Central Hanover Bank and Trust Company, as trustee under the First and Consolidated Mortgage and the Chase National Bank, as trustee under a Second Mortgage.

The claimants have consented that but one award is required, which need not be apportioned 525 in the decree herein. The first trial of this proceeding was heard at an extraordinary term of this court before Mr. Justice O'Malley and proceeded to a final decree from which cross appeals were taken to the Appellate Division.

Judge O'Malley's opinion is reported in 126 Misc. 879.

The following are the four items of compensation awarded by Mr. Justice O'Malley and the disposition thereof by the Appellate Division.

1st. The value of the franchise to build, maintain and operate the spur and occupy the street

526 *Testimony Taken Before Supreme Court*

spaces. The decision of Mr. Justice O'Malley awarding $25,000 for this item was reversed and the item was not remitted to this Court for reconsideration.

2nd: The cost of remodeling the station at Third Avenue and 42nd Street. The Appellate Division affirmed the award of Mr. Justice O'Malley for this item of $80,000, and it was not remitted for reconsideration.

527 3rd: The valve of the elevated structure for which $120,438 was awarded by Mr. Justice O'Malley was held by the Appellate Division to be measurable by its value as taken down, and a determination of value upon that basis was directed. Upon the retrial before Mr. Justice Mullan the value of the structure was determined upon undisputed evidence to be $235.00.

4th: The value of the private easements of light, air and access in respect of which the Appellate Division directed a redetermination of value upon the following basis:

528 "We value the rights to impair light, air and access appurtenant to the property abutting on East 42nd Street at the time of the vesting of title herein upon the basis of the value judicially determined at the time of the original acquisition of these rights."

And the Court added:

"The parties in all probability will be able to agree upon the amount."

Your Honor will see, therefore, that the only matters left for a second trial on the remittitur

of the Appellate Division were the ascertainment of the scrap value of the structure, and the value of the railroad's right to impair light, air and access of property abutting the street, and since the $80,000 item for construction and alteration of the station at East 42nd Street and Third Avenue has been affirmed and the scrap value of the structure was determined upon uncontradicted evidence, at $235.00, the only controverted matter was the value of the rights of the railroad to impair light, air and access in accordance with 530
the opinion of the Appellate Division.

When the matter came back from the Appellate Division a second trial was had before Mr. Justice Mullan, who died after the final decree was prepared but before it could be signed by him.

A retrial is therefore necessary. We have agreed to request your Honor to permit us to submit the case for the purpose of this retrial upon the record made before Mr. Justice Mullan without the introduction of further evidence, with the same force and effect as if the witnesses were 531
present, sworn and gave their testimony as it will be read from the minutes of the former trial.

The opinion of Mr. Justice Mullan is reported in 141 Misc. at page 565.

Mr. Nichols: May I add that a tentative decree was signed by Mr. Justice Mullan in accordance with the opinion reported at 141 Misc. page 565.

The Court: There is only one question about this: If there is going to be no appeal from Mr. Justice Mullan's decision by anybody, and there were no exceptions taken to the rulings, or any-

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thing like that, I am perfectly willing to go ahead with this matter; but I do not want to be bound by some rulings of Mr. Justice Mullan that I might not agree with—if there are going to be any exceptions taken and seriously urged in the Appellate Court.

Mr. Lehman: Of course there were objections to evidence in the record and there were exceptions. Just how to dispose of that particular manner of handling the case we of course have to leave to your Honor's discretion.

533 The Court: If you gentlemen will agree not to appeal from anything of Mr. Justice Mullan thus far, I am perfectly willing to take that and go on; but I am not going to be bound by that record in case of an appeal.

Mr. Lehman: I must state frankly that we do intend to appeal.

The Court: Then I think you better try it *de nova* before me.

Mr. Lehman: Will your Honor permit us to read the testimony from the record?

The Court: Yes.

534 Mr. Nichols: May I call attention to the somewhat peculiar character of the case as it now stands? That perhaps is best evidenced by the observation which my friend read, forming the conclusion of the opinion of the learned Appellate Division, that the parties will in all probability be able to agree on the amount. That is a very unusual statement to be made in an opinion of the Appellate Division, remitting a case for re-determination of value. I think its explanation is to be found in the appreciation by the Appellate Division of the fact that this case

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is one of considerable public importance; that ultimate questions must be determined by the Court of Appeals, possibly by the United States Supreme Court; and that it was the desire of all the parties to expedite the appeal to the Court of Appeals. We desire to make no contentions here, your Honor. We desire merely to get a determination, possibly that reached by Mr. Justice Mullan, after a very full consideration of the important question of appraising values upon a rule determined by the Appellate Division. It is

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true that we did not agree upon the amount; we could not do so, for the technical reason that this is a statutory proceeding involving an assessment covering a very extensive area, and the agreement of the parties as to the amount would naturally not be binding upon the numerous parties interested in the assessment, who could not all be present and assent. But we did agree upon all the basic facts, and I think your Honor will find a desire to avoid any contentions, in order that we should not be subjected to the almost intolerable delay of a reapportionment of the award, whatever it may be, over this area of assessment which runs from 34th Street to 50th Street, and from 2nd Avenue to 5th Avenue; and in the pressure of business in the Corporation Counsel's office with these condemnation proceedings, it seems impossible to get the clerical work accomplished necessary to re-spread those assessments inside of something very nearly approaching a year. So that I think the interest of all parties would be preserved by allowing us to go on just as if Justice Mullan were sitting instead of your Honor.

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538 *Testimony Taken Before Supreme Court*

The Court: I am perfectly satisfied to do so, if you are.

Mr. Nichols: But we must retain our rights in this very formal matter, by preserving our rights of appeal as we go along. We cannot enter into stipulations agreeing on amounts, because that would preclude, or attempt to preclude, certain property owners. For that technical reason, we cannot do that.

Mr. Lehman: Then is it your Honor's suggestion that we re-introduce this evidence?

539 The Court: I do not care what you do in that regard, only I want it distinctly understood that I am not to blame if anybody has committed any error so far in the rulings in the case.

Mr. Lehman: The trouble about submitting it would be that each side wants to preserve the objections he has made and the exceptions he has reserved. If we submit the record and have it decided by your Honor, of course that would be adopting Judge Mullan's rulings on these questions without knowing what they are in advance; and, as your Honor has said, you do not want

540 to assume that responsibility.

The Court: How long will the case take altogether?

Mr. Nichols: There are just about 100 pages of the stenographer's minutes of the previous trial, and it would not take so very long to read it all to your Honor. If your Honor finds grounds to consider more fully those rulings, to take an adjournment, then to take the record and read it over—or if your Honor chooses to go along with Mr. Justice Mullan, as we rather hope you will, that might be a good way to take the matter up.

The Court: Why not just submit the record as it is, let the official stenographer copy it in as testimony given before me, and let us proceed with whatever we have to do?

Mr. Lehman: Then we would have to preserve our objections at the particular points.

The Court: I am willing to take that chance, if you are.

Mr. Page: Would it be a practical thought, that if this record with the rulings of Judge Mullan were to be left with your Honor for a day or so, 542
for your Honor to read over, perhaps your Honor could then come to the conclusion "I will step into the shoes of Judge Mullan with regard to each ruling, because I agree with him"; your Honor then would have fully considered it.

The Court: I think that is a good suggestion.

Mr. Lehman: Then suppose we do submit the record to your Honor as re-copied.

The Court: Yes; after I have taken the record and gone over it all, how long will it take to conclude the trial? Is it all concluded?

Mr. Nichols: Everything is there, your Honor. 543
The only exhibits are from the record of the former trial before Mr. Justice O'Malley. That is put in simply so that we can preserve it as we go up to the higher court. The only question here, as your Honor probably has noted, is the mere question of appraising the value of the easements. We have had considerable expression from Mr. Justice Finch, Presiding Justice of the Appellate Division, who decided the case, when we did come before him, as to the form of the order, and he elucidated the intent of the Court to some extent. Now we have been guided by that in our best judgment in attempting to avoid any possible conten-

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tion that would result in another trial, or sending it back here.

The Court: Then hand me those papers and the minutes, and I will pass the case until next Monday.

(An adjournment was then taken until Monday, February 8th, 1932, at 10:15 A. M.)

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545 Before—Hon. Phoenix Ingraham, J.

New York, February 8, 1932.

(Met pursuant to adjournment)

Present: All the appearances of counsel as noted on February 1st, 1932.

Mr. Lehman: We submitted the record to your Honor last week.

The Court: Yes. I am perfectly satisfied with the record and I am willing to adopt the suggestion made by counsel at the last hearing that that
546 be considered as a part of this case, taken by the official stenographer. I will stand by the rulings and everything in that record.

Mr. Lehman: As if the evidence were repeated here on the stand?

The Court: Yes. I am perfectly satisfied with it.

Mr. Nichols: I am not sure that a formal offer of proof has been made.

The Court: I think you ought to make it and have everybody agree to it.

Mr. Lehman: If your Honor please, we did, in our opening statement, say that we were asking

your Honor for permission to consider the other testimony. 547

The Court: Yes, but if you will make the formal offer now on the record, and have everybody agree to it, I think it is what you ought to do.

Mr. Lehman: Then we will offer the record contained in the stenographer's minutes of the trial before Mr. Justice Mullan, together with all of the exhibits shown therein, for the purpose of saving the time and expense of putting the witnesses back on the witness stand; and for the purpose of saving the time in reading aloud the testimony, subject to the objections and exceptions which were made therein by either party. Your Honor having read the record and having expressed your approval of the rulings of Mr. Justice Mullan, to save further time, we ask that this record be taken as the record of this trial before your Honor. 548

The Court: Motion granted. Do the other parties join in that request?

Mr. Lehman: Yes, as though the witnesses had actually been called and had testified.

The Court: And that is the case in this action just as though the witnesses had been produced, examined and cross examined. 549

Mr. Lehman: And as though the exceptions therein recorded were actually taken to the rulings, and the rulings therein being so adopted by your Honor.

The Court: Yes, all exceptions are saved.

The record before Mr. Justice Mullan reads as follows:

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New York Supreme Court, Special Term, Part III.

[Same Title]

Before—Hon. George V. Mullan, J.

New York, December 8, 1930.

Appearances: Arthur J. W. Hilly, Esq., by John Lehman, Esq., of Counsel, for the City of
551 New York. Page & Page, Esqrs. (William H. Page and John G. Dalton, Esqrs., of Counsel), representing Bowman Biltmore Hotels Corp., Bates Bowman Corporation, The Bowery Savings Bank, Corn Exchange Bank, B. L. M. Bates Corporation, Guaranty Trust Company of New York as substituted trustee of the Estate of John Curry, deceased; J. Chr. G. Hupfel Co. Inc., Rogers Peet Company, Princeton Club of New York, News Syndicate Inc., F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc., Lincoln 42nd Street Corporation, The Oceanic Investing Company, Borden Realty Corporation, The R-W
552 Realty Company, Inc., Trustees of the Estate of James Kelly, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Carbide & Carbon Realty Co. Inc., Anahma Realty Corporation, D. A. Schulte, Inc., and William Volk. Shearman & Sterling, Esqrs., for Robert Walton Goelet, *et al.* Jacob Aronson, Esq., for the New York & Harlem R. R. Co., and New York State Realty & Terminal Co. Parsons, Closson & McIlvaine, Esqrs., by Albert S. Wright, Esq., of Counsel, for the Cooper Union for the Advancement of Science and Art. Middlebrook & Sincerbeaux, Esqrs., by Thomas H. Baskerville, Esq., of Counsel, for Manhattan Storage & Warehouse Co. Edmund

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W. Van Voorhis, Esq., by Herbert H. Maass, Esq., of Counsel, for Pershing Square Building Corporation. George Welwood Murray, Esq., for the Equitable Trust Co. of New York, as Trustee, etc. William Roberts, Esq., for Manhattan Railway Company. James L. Quackenbush, Esq., by J. Osgood Nichols, Esq., of Counsel, for Interborough Rapid Transit Co., and Davies, Auerbach & Cornell, Esqrs., bq H. C. McCollum, Esq., of Counsel, for Central Hanover Bank & Trust Co.

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Mr. Nichols: If your Honor please, our sole duty in this trial is to conform to the opinion and to the order of the Appellate Division, directing that two issues of fact shall be tried in this Court, the value of the easements of light, air and access, appurtenant to the properties abutting upon the elevated railway spur in East 42nd Street, and the value of the structure itself. The opinion of the Court concludes with a statement that the parties will doubtless be able to agree upon the amount. I presume, in view of the almost universal disposition of these claims, through settlement rather than litigation, the Court felt that

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there was a possibility for an agreement in this instance, but as this is a statutory assessment proceeding, the parties entitled to be heard who are to be assessed being so numerous, it is not considered possible to attempt to stipulate the amount. There has been, nevertheless, a very extended consultation by the parties at intervals, which has resulted in reaching an agreement upon the amounts of the judicial determinations and the other elements of fact, which from any angle in the minds of the parties, as well as possibly of the Court, should be available upon this trial.

The theory of the claimants is that the eleven

determinations of value by the Courts, extending from 1888 to 1902, afford a sufficient, and in fact the only basis for determining the then value of the easement. The Appellate Division, of course, did not intend to prescribe the determination of the value of the property taken in 1923 by an ascertainment of the value of that property at the earlier period, to which I have referred, the average date of the original acquisitions being 1898, but it states in its opinion that it deems
557 the value at the time of taking to be the same as it was at the time of the acquisition of the easement by the Manhattan Railway.

I will very briefly read certain expressions of the Appellate Division in that regard. The opinion states that the value must be determined upon the basis of the judicial determinations of value at the time of the original acquisition. It states that the value must be determined at an amount not less than that previously determined by the Courts at the time of acquisition. It then takes up the question as to whether the value should
558 be increased, and as to that question it gives a negative answer, which is based apparently upon the theory of inadequacy of the improvement, failure of the elevated road, in the opinion of the Court, to increase its earnings during that period, and, therefore, the values on 42nd Street, along the line of the spur, are to be deemed to have remained stationary during this period.

That presents to the mind of the claimant, speaking frankly, the essential legal difficulty presented by the Appellate Division. As I apprehend, our difficulty here is not legal. It is merely the ascertainment of the question of fact, what was the value of the easements based upon judicial determination at the earlier time?

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There were twenty easements acquired by the Manhattan Railway Company. They embraced the entire frontage of the spur, which, as your Honor knows, extends from Third Avenue to Park Avenue, through East 42nd Street. The nature of the improvement and the value of the properties in those two blocks is radically different. The block west of Lexington Avenue, to Park Avenue, in the vicinity of the Grand Central Station, as thus determined, has values which are more characteristic of the Fifth Avenue district, while the values to the east of Lexington Avenue, both at the time of the original acquisition of the easements by the Manhattan Railway Company and at the date of the vesting of title, the improvements and values of that property to the east of Lexington Avenue are radically different and of a less desirable character. It was deemed necessary to take two zones in the determination of values. There are, fortunately, decisions as to value in both of those zones, both on the north and south side of the street, and in such physical relation to the easements which were acquired by prescription and by settlement, that they are very fair and sufficient and representative of the value of the easements which were acquired, not through judicial determination of their value, but by prescription and by settlement.

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There are eleven judicial determinations and there are nine other easements; only eleven have been judicially determined. The method which we have adopted—the details of which we submitted some weeks ago to counsel for the City and the property owners, after much study, is of determining the average value of the easements at

the time of their acquisition, on the front foot basis. That is the basis on which our settlements have been effected generally. Wherever there has been a locality with a homogeneous development of value, judicial determinations in the Courts in the long easement litigation have been so extensive, that we have been able, through a process of averaging, to arrive at the value, based upon such judicial determination. I know of no other method, your Honor, by which we can proceed to determine the value of the easements, on the basis of the judicial determinations, except that which I have just referred to.

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It is our utmost desire, and it is shared by counsel for the City and the property owners, that we should, with the utmost diligence, endeavor to ascertain fairly and candidly the intent of the Appellate Division, because of all things we desire to avoid, it is the necessity for another trial of this case, and, therefore, we desire, with the assistance of this Court, to present to the Appellate Division, a result of this trial, which shall be deemed by the Court to fairly and adequately represent the intent of the opinion and order of the Appellate Division. The suggestion has been to offer the various matters of fact which might lead to findings of fact by this Court, which, even if they were not in accord with the Appellate Division, might nevertheless be available upon appeal, but we desire to obtain from this Court only a determination which may represent not your Honor's views as to these easements, or our contention as to these easements, but the opinion and views of the Appellate Division.

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Now, the testimony I shall offer will be extremely brief. Mr. Huntley, who testified on the former trial, as to the value of the easements, will appear here and testify to them on the basis prescribed by the Appellate Division. I shall show that he has not departed from the determination of the value of the easements which he made upon the former trial, upon the basis of the judicial decisions, because he used the judicial determinations and they accorded with the values which he then testified to, but that value was based upon the actual value of the abutting properties. The easement values were determined by him, as they have been determined by the Courts of this State, in what the Court of Appeals has said was a litigation unparalled in the history of our Courts. It is not necessary to refer to that method of determination. It was followed throughout; it was their reproductive value, the market value, the value of the property for the purposes for which it was ordinarily available.

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Now, we do not wish in any way on this trial to give ground to any inference that we are here in any way trying to modify the position that we took before Mr. Justice O'Malley, and will pursue in the further progress of this case upon appeal, and indicated by the objections that we have raised to Mr. Justice O'Malley's decision, by using the method which will be followed in the evidence here. The constitutional objections particularly, we desire to restate upon this trial, in the form in which they have already appeared in the printed record.

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Therefore, I wish, with the utmost earnestness, to again object to the determination, not only of

Mr. Justice O'Malley, but of the Appellate Division, so as to preserve our attitude on this trial, and the objections we have heretofore made and exceptions taken in this proceeding in view of the appeal that will be taken; that those decisions, particularly that of the Appellate Division, are in violation of the provisions of Article 1, Section 6, of the Constitution of the State of New York, which provides that private property shall not be taken for public use without just compen-
569 sation; of Article 1, Section 10 of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts, and of the fourteenth amendment to the Constitution of the United States, Section 1 thereof, which provides that no State shall deprive any person of life, liberty or property, without due process of law.

I shall be very glad to make any further explanation of the situation that your Honor may desire.

The Court: I think that is sufficient.

570 Mr. Nichols: I have a memorandum.

The Court: I assume the law of the Appellate Division is the law. I am not criticizing it. I shall take it as the law.

Mr. Lehman: Before we go into the trial, I would like to correct what might be an erroneous impression to be gained from the statement of counsel. In the first place, he speaks of the value of easements. As a matter of fact, we have no easements here at all in any sense of the word, because, according to the contention of the city, from the beginning, according to the decision of the Appellate Division, what the railroad got,

whatever it got, was no more than the right to impair the abutting property owners' easements, and if they now proceed on the theory that we have easements here, I want to correct that, because that might create confusion.

Mr. Nichols: Might I perhaps qualify what I said, so as to avoid any possible suggestion, that the decision was that the award here should be based on what we paid. There is not a shadow of suggestion that the exact amount that we paid should be returned. It is that the value of 572
the easements should be determined upon the basis of the judicial determination of value at the time we acquired them. Furthermore, there are the prescriptive easements and the ones acquired by settlement, it being impossible to dissect the past damages out from the total amount paid, the settlements, therefore, are not available, and the whole twenty easements should be determined upon the basis of the determinations which related to the eleven which were judicially determined.

Let me illustrate the difference between the 573
cost of the easements and what the Court judicially determined to be the value of the easements. In the Shaw case, which involved the old Grand Union property, we paid $181,000 as a result of a judgment. The value of the easement, however, upon which we are presenting our case today, is only $77,500, a vastly smaller sum. If what we paid was to be the measure we would have to consider other elements entering into our payment, but it is the value of the easements which is to be determined, and we are restricted, as I shall restrict myself, to proof solely of the amount determined as the value of the fee itself.

Mr. Lehman: As to the agreement, with reference to the amounts, which Mr. Nichols has spoken of, I wish to say to you that we have made no agreement as to anything. It probably will be best for me to correct here the statement as to the amount that was paid. The $181,000 that Mr. Nichols says was paid for one easement as a matter of fact did not represent what was paid for the easement at all. It represented interest, costs and a lot of other things. Of course, the Appel-
575 late Division did not mean items that were added to the cost of the easement, $77,500, making a total of $181,000.

Mr. Nichols: I was careful to exclude everything except $77,500. My remarks were addressed to the fact that if, what the easements cost was to be the basis—the Appellate Division said not—then not only what was actually paid to Shaw would have to be considered, but also other expenses necessary, but the amount that was judicially determined to be the value of these easements by the Court is definite and absolutely unquestionable. We all agree on that.

576 Now, the City has been over our books. We have thrown open our books to the City, and the City is in possession of every item on the books which is relevant to our present controversy, which shows the distinction between fee payments and those other elements, such as interest and costs and past damages; but, your Honor, there is no question and we are to determine the value of the easements. I know they are intangible. I am aware that the courts of this State have created them and I appreciate fully the artificiality of that legal creation. It may be strange and anomalous,

but they have been created by the courts of this State, as property, their value has been determined as property, and they remain property under the Constitution of this State and the United States. It is that which we must determine. We acquired them under an order of the Court, and that order directed the transfer to us of full covenant and warranty deeds, which are in evidence in this case in every instance. If title was ever obtained to anything under a series of decisions, which stated a law of property, we certainly 578
obtained and possessed at the time of the vesting of title in the City the title to those easements. However, I am not going to argue it any further.

The Court: You say the easements passed?

Mr. Nichols: They were there. They did not vanish in the thin air.

Mr. Lehman: The Appellate Division has already decided that.

Mr. Nichols: I might refer your Honor to the fact, when the spur was taken down in Morris Street, the Cunard people gave us $18,000. I am only speaking of what is in the record here, and 579
they wanted a deed by which they recorded these easements, and they were recognized as property.

Mr. Lehman: A private transaction anyway. Now, if your Honor please, the City's position in this matter, as your Honor will note from an examination of the opinion, is that the so-called easements, or what the Appellate Division has labeled the right to impair easements, which is more accurate than easements, are of no value to the railroad; that they were merely a part of the railroad, a part of that disappeared with the uselessness and lack of value of every other part of the

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railroad, to-wit, the franchise and structure. Your Honor perhaps has noticed from the opinion of the Appellate Division that originally the claim was for damages for the franchise, the special franchise from the State and City to occupy the street, the value of the structure itself, and the value of the so-called easement rights, and everything has been excluded except an item of $80,000, for the matter of constructing stairways at 42nd Street and Third Avenue, and the scrap
581 value of the structure. The item of construction was affirmed by the Appellate Division and will go into your Honor's decree, whatever it may be, but the only test here is as to the value of the so-called right to impair easements, according to the decision of the Appellate Division. Our position today is this: We wish to maintain our original contention, that they are entitled to nothing for the reasons that we originally stated, that the easements, or right to impair easements, were absolutely worthless without the franchise and without the structure, and the Court has held,
582 and the Appellate Division has affirmed the contention, that the structure was of no value except as taken down, and the easements were of no value, because the railroad was operated under an annual loss, and therefore those things being out of it, the easements, or the right to impair easements, could have no value, because they could not be used for anything but for railroad purposes, and that was also approved by the Appellate Division. Now, while we wish to maintain our original position—of course we know we are here to try this one issue—we wish to state what we believe to be the meaning of the Appellate Di-

vision itself. To make it plain, we never consented or concurred in anything that militated against that view, and that is, that this railroad was to be reimbursed what it paid for those rights, and no more.

The Court: All I can do is to take such proof as the Appellate Division has said is competent evidence of the damage.

Mr. Lehman: As to the record in this case. My friend seems to intend to use the record for a much wider purpose than we had in mind. In 584
other words, we are going to reserve every objection that we made in the record and every exception in the record, and we reserve the right to make other objections that may be proper, if they attempt to use the record on the narrower issue which is before your Honor today.

Mr. Murray: On behalf of the Equitable Trust Company, as trustee, I desire to repeat for this record the constitutional objections that we took to Mr. Justice O'Malley's decision, and without reading them, which I think would be tedious to your Honor, I will say that they appear in the 585
Volume I of the record before the Appellate Division, at page 181, running over to and including page 182. There are there recited the objections under the Constitution of the State of New York and of the United States, and in respect to some statutes of the State. In think it would be more convenient for me to refer to them, rather than reading them, although I am very willing to read them, if your Honor desires.

The Court: They are deemed part of the present record.

Mr. Roberts: I join with Mr. Murray in making the constitutional objections.

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Mr. Lehman: I will now proceed with my proof. I offer in evidence Chapter 788, Laws of 1917. That was the first statute authorizing the condemnation. I ask that it be deemed marked in evidence.

Mr. Nichols: I informed my friend that we had no objection to any of the formal proof. It all appears in the case already.

Mr. Lehman: It should appear on this trial.

(It is marked City's Exhibit 1-X.)

587 Mr. Lehman: I offer in evidence Chapter 611, Laws of 1919, and ask that it be deemed marked in evidence.

(It is marked City's Exhibit 2-X.)

Mr. Lehman: I offer in evidence Chapter 635, Laws of 1923, amending Chapter 788, Laws of 1917, as amended by Chapter 611, Laws of 1919.

(It is marked City's Exhibit 3-X.)

Mr. Lehman: Also certified copy of Resolution of Board of Estimate and Apportionment, adopted December 5, 1919, authorizing the President of Manhattan Borough to negotiate with the Manhattan Railway Company for the removal of the

588 tracks, structures, etc., constituting the 42nd Street spur.

(It is marked City's Exhibit 4-X.)

Mr. Lehman: Also certified copy of the Minutes of the Board of Estimate and Apportionment, of the meeting of November 26th, 1920, particularly referring to the letter of the Borough President for the purpose only of showing the fact that an agreement between the Railroad and the City could not be reached under the provisions of the statute preliminarily authorizing the Railroad and the City to agree.

Mr. Nichols: You are not offering that voluminous document?

Mr. Lehman: Only with reference to that letter.

(It is marked City's Exhibit 5-X.)

Mr. Lehman: I offer in evidence certified copy of Resolution of the Board of Estimate and Apportionment, adopted January 14th, 1921, requesting the Public Service Commission, in the First District, to institute a proceeding and conduct a hearing, pursuant to Chapter 788, Laws of 1917, as amended by Chapter 611, Laws of 1919. 590

(It is marked City's Exhibit 6-X.)

Mr. Lehman: The Public Service Commission instituted such a proceeding and an order and determination was had on April 22, 1921. I offer in evidence certified copy of that Resolution and order of the Public Service Commission.

(It is marked City's Exhibit 7-X.)

Mr. Lehman: The Act of 1919, the statute under which this proceeding is authorized, required that a certified copy of this order of the Public Service Commission be filed with the Secretary of State, and I have been informed by the office of the Transit Commission that the Resolution of the Public Service Commission was filed with the Secretary of State, and I ask for a concession of that. 591

Mr. Nichols: Certainly. It is all in the record.

Mr. Lehman: I ask for a concession as to the service of the said Transit Commission's order on the Railroad.

Mr. Nichols: Certainly.

Mr. Lehman: I offer in evidence certified copy of Resolution of the Board of Estimate and Apportionment, dated September 30, 1921.

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(It is marked City's Exhibit 8-X.)

Mr. Lehman: Pursuant to the foregoing resolution the City made an application to this Court, in 1923, on July 16th, for an order to condemn, and that the compensation be determined by this Court, without a jury, and that the improvement be assessed. I wish to offer in evidence as one exhibit, Petition annexed to the Notice, affidavit in opposition to the application, made by Mr. Nichols, answering affidavit of Mr. Swords in support of the motion; order of the Special Term, Mr. Justice Bijur, granting the motion; affidavit of the publisher as to posting of the notice of the application, as required by law. If your Honor please, I shall have to offer them from the papers sent up from the County Clerk's office. I ask that they be marked as one exhibit.

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(They are considered as marked City's Exhibit 9-X.)

Mr. Lehman: That order of Mr. Justice Bijur was appealed from and was affirmed by the Appellate Division, and I wish to offer certified copies of the orders of the Appellate Division. They are filed papers.

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(They are considered as marked City's Exhibit 10-X.)

Mr. Lehman: I offer in evidence Resolution of the Board of Estimate and Apportionment, dated November 23rd, 1923, vesting title in the City in this proceeding. It is a certified copy.

(It is marked City's Exhibit 11-X.)

Mr. Lehman: I will state for the record that three claims have been filed and offer for the record for identification claim by Murray, Prentice & Aldrich, attorneys on behalf of the Manhattan

Railway Company; claim on behalf of the Interborough Rapid Transit Company, filed by James L. Quackenbush, its attorney; claim of the Central Union Trust Company of New York, as trustee, filed by Davies, Auerbach & Cornell, its attorneys.

(They are marked City's Exhibits 12-X, 13-X and 14-X respectively.)

Mr. Lehman: Also claim on behalf of the Equitable Trust Company, filed by George W. Murray, as its attorney.

(It will be marked City's Exhibit 15-X.)

596 Mr. Lehman: Also Damage Map, filed in the office of the County Clerk, as required by law, July 19, 1923.

(It is considered as marked City's Exhibit 16-X.)

Mr. Lehman: The unusual situation here is that the structure has already been demolished, but I must ask your Honor to view the premises nevertheless. That is all of the preliminary proof.

597 Mr. Nichols: Reference has been made to conferences and hearings before the Appellate Division following their determination, and an agreement was made, pursuant to the suggestion of the Court, so as to expedite the appeal and save possibly a large amount of printing, to the effect that the record on the former trial should be offered in evidence upon this trial, and an agreement was reached between counsel as to the form in which that offer should be made.

Mr. Lehman: I want to offer the opinion and the order of the Appellate Division in this case, remitting the case back to your Honor.

(They are marked City's Exhibits 17-X and 18-X respectively.)

598 *Testimony Taken Before Supreme Court*

Mr. Nichols: This is an agreed statement with reference to the introduction in evidence of the record on the former trial. We are going to read it in evidence, reserving all objections, as if the evidence were all written out, with the same force and effect as if the witness testified, and the objections were made.

Mr. Lehman: I am going to reserve my right to preserve those objections and I am accepting this record on condition that we are not bound by
599 the action of the Court in the overruling of our various objections on the first trial.

The Court: Of course not.

Mr. Nichols: We all understand that. For the purpose of expediting this trial and so that the record of the evidence and proceedings on the former trial might render such assistance as it may afford the Court on this trial in interpreting the purpose and intent of the opinion and order of the Appellate Division, and also for the purpose of saving the expense of reprinting said record on any subsequent appeal herein, I offer in
600 evidence the testimony, record, stipulations and exhibits taken, made or received upon the trial herein at an Extraordinary Special Term of the Supreme Court held in and for the County of New York on September 27, November 12th, 13th and 14th, 1923, and June 2nd, 3rd, 4th, 9th, 10th, 16th and 23rd and November 6th and 10th, 1924, and September 22nd, 1925, and any other and further proceedings or matters herein which together with said testimony, record, stipulations and exhibits constitute and are contained in the papers on appeal from the Final Decree of the Supreme Court herein made by Mr. Justice O'Malley, dated Feb-

ruary 28, 1928, and entered and filed in the office of the Clerk of the County of New York on March 14, 1928, as they appear in the four bound volumes constituting the papers on appeal from the said final decree, to be read in evidence and received upon this trial with the same force and effect as if each and every witness whose testimony is contained in said record were called upon this trial, sworn and testified, as the testimony of said witnesses appears in said papers on appeal, all objections and exceptions, rulings, findings and other 602 matters contained in the record, as shown in said papers on appeal, to be construed as offered, made or received with the same force and effect as if they had been made, offered or received upon this trial, all parties consenting to its reception, upon the condition and understanding and reservation that all the objections and exceptions in that record shall be preserved with full force and effect; and subject also to the right to make any further objection to anything in this record that may be offered on this trial, particularly on the questions to be tried and determined pursuant to the opin- 603 ion and order of the Appellate Division.

Mr. Lehman: It is understood that the offer and reception of that record in evidence on this trial is not for the purpose of affecting in any way the full force and effect of the opinion and order of the Appellate Division of May 9, 1930, in defining and restricting the issues to be determined upon this trial. I offer in evidence this resolution of the Board of Estimate and Apportionment, adopted June 29, 1923.

(It is marked City's Exhibit 19-X.)

Mr. Nichols: As almost all of the documentary

evidence that has been produced by my friend is already in this record, which we have agreed to make part of the record here, I presume that Mr. Lehman does not intend that it shall be reprinted, but having been offered in evidence, we may consider it as part of this record as printed in the former record.

Mr. Lehman: Yes.

Mr. Nichols: It is understood now that we have introduced the four volumes of the former
605 trial.

(Four volumes received and marked as one exhibit, Claimants' Exhibit A-X.)

Mr. Nichols: Now, at the former trial, there were introduced, not for the purpose of showing costs or value, but merely for the purpose of showing the title of the claimants to the easements, various conveyances of title to the Manhattan Railway Company made by the direction of the Court, or made as the result of settlement. In those conveyances and releases—which are now in evidence, there is a statement as to the
606 difference between the amounts in those proofs of title representing the consideration and the amounts actually paid, and we are now proceeding, as we did not on the former trial, to show the value of the easements at the time we originally acquired them, for the Appellate Division so directs. There was no proof of value at that time. There was no proof of the amounts actually paid at that time, for the reason that the claimants believed that what was paid twenty-five years before the date of vesting of title to the city possessed no relevancy whatever to the value of the property at the time it was taken. There has

been no property perhaps in the city that has increased in value as has property on 42nd Street, in this district, very largely through the enterprise of these claimants in first bringing rapid transit, by means of an elevated railway, and then by the first subway to that district. 607

Now, I presume there will be no question raised on this trial as to the title which we have acquired to the easements upon this spur. It was held by Mr. Justice O'Malley that we had acquired easements to the entire property and that finding has been affirmed by the Appellate Division. I presume the evidence of our title being in the case as it was formerly tried, it is not necessary for me to encumber this record with a renewal of proof of title to the easements upon the entire property. 608

There is one matter as to which some doubt has been suggested by my friend. That is, for a certain period of time, 1885 to 1911, I believe, the City of New York possessed the frontage representing Depew Place. Formerly, that is, prior to 1885, and at the time the Railroad was constructed, it was as it again became in 1911 and was at the time of the vesting of title in the city, the property of the New York Central Railroad, and the Harlem Railway. Now, during that brief interval of time that the city owned that property any easement that attached to it would incidentally pass to the possession of the Manhattan Railway Company under the original grant made by the City, as part of the franchise grant, because it has been held by the Court of Appeals that the city purported to make such a grant, and it was only because the city was found not 609

to own this property in the street, but that it was the property of the abutting owners, that the grants became imperfect. That is the situation, a technical situation, with which we approach this question of Depew Place, if it is intended to raise that question, but it having been held by Mr. Justice O'Malley, and affirmed that we had a prescriptive title to that frontage, and obtained title to the entire frontage on both sides, I assume that that question is not going to be raised here.

611 Mr. Lehman: We are not going to assume anything. Whatever the truth is, it will go in for what it is worth, but I do not make any concession.

Mr. Nichols: You concede it was held that we had title to the entire frontage on the former trial, by the Appellate Division?

Mr. Lehman: No, because it may be title and may not be title. The record did not go up for the purpose of testing the title in that case.

Mr. Nichols: No objection was made to our proof of title?

612 Mr. Lehman: It may be sufficient, but I cannot agree to it.

Mr. Nichols: I do not want to retry anything here unless it is necessary. I assume it is not necessary to put in any proof of facts so far as Depew Place is concerned. I will now call my first witness.

FRANK D. ALLEN, residing at 179 24th Street, Jackson Heights, L. I., called as a witness for claimants, being sworn, testified as follows:

*Claimants' Witness—Frank D. Allen—Direct* 613

*Direct examination by Mr. Nichols:*

Q. You have been connected with the Manhattan Railway Company and the Interborough Rapid Transit Company? A. Yes, sir.

Q. And still are? A. Yes, sir.

Q. For how long? A. Since 1889.

Q. Have you been familiar with the acquisition of easements by the Manhattan Railway Company during that period? A. Yes, sir.

Q. In what capacity? A. Part of the time I was managing clerk, and part of the time I have 614
been designated as assistant attorney. During the earlier years I had general supervision of all records in the office and general supervision of the conduct of the litigation, and as a matter of experience and practice I was familiar with the conduct of the so-called settlements, or purchase of easements.

Q. Were you a member of the so-called Land Damage Committee, composed of Mr. Quackenbush, yourself and myself? A. Yes.

Q. Have you been familiar with the records of the conveyances of easements of light, air and 615
access, appurtenant to the properties abutting upon the spur in East 42nd Street, as the result of judicial determinations and settlement? A. I have been.

Q. On the former trial did you place in evidence the complete record as to the title thus conveyed? A. I did, yes.

Q. Are you familiar with the facts relating to the three parcels in respect to which prescriptive title was obtained? A. I am.

Q. Did you then testify, and do you now tes-

tify, that there was an uninterrupted possession by the Manhattan Railway Company during the prescriptive period? A. I did and do.

Q. Without any recognition of the abutters' title? A. Yes.

Q. So that after a period of twenty years from the taking possession of the easements by the Manhattan Railway Company, under the franchise grant of the City of New York, the title vested in the Manhattan Railway? A. I so tes-

617 tified.

Mr. Lehman: Objected to. He says possession under grant from the City of New York. It calls for a pure conclusion. It is a matter of law, not a matter for the witness to state that he knows that it came within the grant from the City of New York.

The Court: Was this proof all offered before?

Mr. Nichols: Yes, and I am rather surprised at my friend not conceding the fact that title to these easements has been established by the proof and also by the findings of the Appellate Division.

618 I do not see the good of going over ground already covered.

Mr. Lehman: All I object to in this question is, did you acquire it under a grant from the City of New York?

Q. You did acquire it by prescription as of what date? A. Twenty years from the date when we entered upon the street in front of the abutting property. We entered there in 1878, and the twenty year period matured in 1898.

Q. August 26, 1898, does that refresh your recollection? A. Yes.

Q. Very briefly, as to the rest of the frontage, on both sides of 42nd Street, that is, all the front-

age except this frontage acquired by prescription, we have the conveyances of title directed to be made by the Court, and obtained otherwise from the property owners, where settlements were made, covering title to all the rest of the frontage? A. Yes, with one exception, where we got title by condemnation.

Q. Now, we come to the matter as to which Mr. Lehman desires to have you appear again so as to illuminate your testimony on the former trial. You stated on the former trial, I believe, at page 620
451, beginning with the folio 1353, that the consideration recited in the conveyances, the deeds of the easements to which you have just referred as having been given to all the easements except the one acquired by condemnation and the three acquired by prescription, did not in all cases recite the amount of payment actually made, but rather the amount of the fee judgment? A. I did. but I qualified that later on, to a certain extent.

Q. Now, would you make that qualification again, in such form as to make it clear to Mr. Lehman's satisfaction? A. It is true that the 621
considerations recited in the conveyances in most cases represent the amount of the so-called fee. There are some exceptions, however, on 42nd Street. I think four cases, where the amount of the fee was judicially determined, and the consideration recited in the deed or conveyance is not the same as the amount awarded by the Court in its judgment.

Q. Now, in all cases do there appear upon the books of the Interborough Rapid Transit Company, the lessee of the Manhattan Railway Company, and the books of the Manhattan Railway

Company as they were kept prior to the date of the lease of 1903, complete statements of all payments made, whether in voluntary settlement or condemnation or as a result of the determination of the Court as to the fee values of the easements? A. Yes, those payments are recited in the books of the company, constituting the entire amount paid.

Q. And upon the books of the company does there appear, in respect to all the judgments rendered by the Court—and there were eleven of them, of the twenty easements here——

623

Mr. Lehman: One moment. I shall not object, if I have it understood from Mr. Nichols that he concedes that in all those voluntary settlements the amounts recited include both past and fee damages. If that will not be conceded, I must object to the testimony.

The Court: He must separate them.

Q. In all the judgments made as to the eleven parcels, where values were judicially determined, was there a separate determination made of the fee damage? A. There was.

624

Q. And does that separately appear upon the books of the company? A. It does.

Q. And is that separated in the judgments themselves and the books of the company from the other items, namely, past damages, interest and costs, where costs were awarded? A. Yes.

Mr. Lehman: I am not objecting to this evidence as to judgments, because we did have leave to inspect the books as to judgments and we have no objection to that, but we will have to object unless they concede that the settlements included both fee and past damages.

625

Q. Did the judicial determination always include past damages? A. Always.

Q. And that is true as to the judgments on 42nd Street? A. Yes.

Q. Where there were past damages? A. Yes.

Q. In the condemnation proceedings to which there has been reference, was there any past damages included? A. Not in that proceeding.

Q. The basis of fee value that you have referred to is the actual value of the easements, considering that the elevated railroad was acquiring them for all time?

626

Mr. Lehman: Objected to. I think that is wholly objectionable.

Q. That is the basis of fee damage? A. I assume so.

Q. While the past damages are awarded on the basis of the actual use of the property during the time of the past damages, if any? A. Yes, that is so.

Q. So that the basis was different. If the property were vacant, or used as the Westcott property for a stable, it might be that there were no past damages, while the property might be awarded substantial fee damages? A. Yes.

627

Q. Now we come to the settlements: In making the settlements, were the payments divided into past damages and future damages? A. That was not taken into consideration to any extent.

Q. Were the payments made in a lump sum? A. The payments were made in a lump sum.

Q. And is that the case where payments were made for the easements in settlement on 42nd Street? A. Yes.

628 *Claimants' Witness—Frank D. Allen—Direct*

Q. In every case? A. Yes, that is my understanding.

*By Mr. Lehman:*

Q. Do you know it to be a fact? A. Yes, that is so, as a matter of fact.

*By Mr. Nichols:*

Q. In making those settlements, were they made in respect of properties as to which legal ques-
629 tions might be outstanding? A. That is true.

Q. The Shaw case. Was there any litigation on that? A. Yes, a very long, bitterly fought litigation.

Q. What was the extent of the past damages, roughly speaking, there?

Mr. Lehman: We object to it, (1) on the ground that the evidence is incompetent, immaterial and irrelevant, for the reason that the railroad company does not own the easements of light, air or access in 42nd Street, which formerly belonged to the abutting owners. That those easements are
630 incapable of ownership separate and apart from the abutting property. The railroad by the erection of its structure in 42nd Street extinguished or impaired such easements of light, air and access to the extent that the structure occupies the street and by the payment of damages to the abutting property owners in settlement of injunction suits in some cases, by voluntary settlements in other cases, by condemnation in one case and by prescription in other cases, it acquired the right to maintain the structure and operate it as a railroad and to continue to extinguish or impair the easements by so doing free from interference or

the right of interference by the abutting owners. All that the Railroad owned in 42nd Street, and all that is taken in this proceeding, are the franchises obtained from the State and the City, the elevated structure, and the right to maintain the structure and operate it as a railroad pending the life of its franchises free from interference or right of interference on the part of abutting owners. The franchises, the structures and the rights obtained from the abutting property owners constitute and can be valued only as a single entity 632 and none of these elements has any value separated from the others. The spur could no longer be operated except at a large annual loss and the Public Service Commission, after proceedings and hearings, has determined and ordered that the spur was no longer necessary and convenient for the public convenience. Therefore, the right to run the elevated railroad in the street was of no value, and for the same reasons the physical structure had no other than scrap value. It follows, therefore, that the right acquired by the Railroad to impair the easements of light, air and 633 access is of no value separate and apart from the other constituent elements of the railroad.

I am making this objection to preserve my rights on the trial.

The Court: Have you stated your objection?

Mr. Lehman: (2) Objected to as incompetent, immaterial and irrelevant, because the rights of the Railroad to impair the easements of light, air and access appurtenant to the property abutting on East 42nd Street could continue only during the life of the company's special franchises to maintain the elevated structure in 42nd Street and to operate trains and cars thereon and thereover,

and under the Rapid Transit Act of 1875, such special franchises had life contemporaneous with the existence of public convenience and necessity, which was the basis upon which they were granted, and terminated with the determination of the Public Service Commission, successor of the Rapid Transit Commission, on April 22nd, 1921, that the Railroad was no longer necessary and convenient for the Public Service and constituted an impediment and obstruction to the public
635 use of the street, pursuant to which the City, on December 7, 1923, vested title to the property described in the special acts under which this proceeding was instituted and under the Greater New York Charter. Furthermore, I object to the testimony as to the value of the easement rights acquired by prescription, upon the ground that it is incompetent, immaterial and irrelevant, for the reason that compensation for the alleged rights is confined and limited by the opinion of the Appellate Division, which defines the conditions under which the company can be
636 reimbursed. This objection I make to the evidence called for as to the rights to impair the light, air and access, which were paid for by the Railroad, as well as to such rights as the Railroad acquired by prescription. As to prescriptive rights, no money having been paid for them, they were acquired for nothing and the Railroad Company had the benefit of impairing the light, air and access appurtenant to the abutting property, for over forty years for nothing.

I make those objections to preserve our rights on the other record as well as to the evidence as offered in this record.

(Objection overruled; exception.)

637

Mr. Lehman: And upon the further ground that evidence of amounts paid is not proper evidence of the measure of damage in this case and that the judicial determinations are not binding upon the City in this case and do not furnish a legal basis of the measure of damages.

(Objection overruled; exception.)

A. My recollection is that the fee value damage was $77,500, and that we actually paid after the litigation was terminated in the neighborhood of $181,000.

638

Q. Which included costs? A. Included costs, past damages and accumulated interest.

Q. Was there a litigation in respect to the properties across the street, the Kernochan leasehold property? A. Yes.

Q. And the Winthrop. There was an extensive litigation? A. Yes, sir.

Q. And in the case of those leasehold properties, having a frontage of 150 feet, was there a settlement made for the leasehold interests following the judicial dterminations as to the fee value of the reversionary interest? A. Yes.

639

Q. What amount? A. The amount paid for the leasehold damages was in the neighborhood of $36,000 to my recollection.

Q. That was called the Pinchot leasehold? A. Yes.

Q. Was the case tried, the Pinchot leasehold? A. My recollection is that the case was tried, but that the Justice before whom it was tried died before rendering his decision.

Q. And the case was then settled for $36,000? A. That is right.

Q. Now, in such case, as in the others, was there any division made between the amount apportioned to the fee or future damages and the past?

Mr. Lehman: Objected to. He has already testified that these private settlements all appeared on the books. Counsel has not, as we understand, conceded that those amounts appearing on those books were lump sums, including both past and future damage and as a matter of fact, the books
641 will show affirmatively that they included both past and fee damages. I object to this gentleman testifying about any amount in these books, unless we first have the concession that these amounts included past and future damages.

The Court: What am I to do about that?

Mr. Nichols: The Court is to proceed solely upon the basis of the judicial determinations of value.

The Court: Yes, we must do our best.

Mr. Nichols: We will endeavor to do that, and we have judicial determinations of value. We
642 can find the rate per front foot, established by judicial determinations of value, which will be a clean-cut determination of the value of the fee and eliminate any guessing as to what the past damage, if any, was in these settlements.

Mr. Lehman: This witness has said that the amount that was paid did not take into consideration past and fee damage, but was a lump sum.

Mr. Nichols: Have I not made it clear as best I can?

*Cross examination by Mr. Lehman:*

Q. It includes both past and future damages? A. It may.

Q. It may? A. I will say yes.

Mr. Nichols: I called him at the request of Mr. Lehman, simply to clarify the fact that the recitals in these instruments conveying title to us do not represent always the complete amount. Furthermore, I am bringing it out as clearly as I can, that those settlements do include all elements claimed against the property. That is what they are, settlements; if there is any past damage it includes it; it includes whatever damage there is.

644

The Court: How are you going to show how much should be deducted from the payment?

Mr. Nichols: I know of no method of doing it. I am not going to use the settlements at all. They are not judicial determinations. Let that be made clear.

Mr. Lehman: I will have to have the books.

Mr. Nichols: Here is a sheet containing everything bearing on this case.

Mr. Lehman: If it shows that these private settlements in every instance, except one, has an entry of so much money past and fee damage, that is what I want. If you concede that, that is all I want.

645

Mr. Nichols: It includes everything.

The Witness: But there is no division of the amount.

Mr. Lehman: Do your books show as to each of these settlement cases an entry of the lump sum paid and contain the statement "for fee and past damages"?

The Witness: Yes, except one, Laimbeer settlement J-5.

The Court: Now, Mr. Lehman, I should like to hear your ideas; what do you say?

646 *Testimony Taken Before Supreme Court*

Mr. Lehman: Our position is that they cannot recover anything for the easements. I believe they cannot recover anything under the theory of the Appellate Division, more than they have actually paid.

The Court: For both fee value and past damage?

Mr. Lehman: For fee damage. What they are attempting to do is to recover more than they paid.

647 The Court: There must be some kind of allocation.

Mr. Lehman: We say they paid so much money for a right to destroy or interefere with the abutting owners' easements. They got that for all time to come. That is what they paid for, so that they cannot have any more, if they can have anything, than the amount that they paid under the judgments. The judgments separate the past from the fee damages, so that they can have under my interpretation of the Appellate Division decision the amount that they paid under
648 the judgments for fee value. Under the settlement cases they are entitled to what they paid for fee damages, and I don't know, I confess, of any way to separate those lump sums that they paid, any reasonable way that appeals to your Honor. I do not know of any legal proof by which it can be done.

Mr. Nichols: I am very anxious not to mislead, your Honor. We are strictly taking the fees as the basis to determine the value of the easements at that time. That is our position.

The Court: The expert would base his theory

upon the averages of what has been done in the litigations in the past?

Mr. Nichols: Yes.

Mr. Lehman: That process gives them more dollars than they paid for these things and the Appellate Division has said that they cannot have any more; that their rights have not increased in their hands.

The Court: We are talking about the proof.

Mr. Lehman: What I mean is, that the Appellate Division says in effect, "Give these people what they paid for the easements." The Appellate Division says, "You cannot have more than you paid." 650

The Court: The Appellate Division must have assumed there was some way of making the proof.

Mr. Lehman: The Appellate Division said it was so simple that the parties no doubt would agree on the amount.

Mr. Nichols: If the Appellate Division had said that what we paid should be the criterion they would have said it, but they did not. They said we must determine the value of the easements upon the basis of the judicial determinations which were had at the time of the original litigations. I am following precisely the language of the Appellate Division. 651

The Court: Can we deduce from those determinations some system of allocation?

Mr. Nichols: Yes, we did on the former trial; not only is it feasible, but it is a proper and customary way. Here we are determining the value of real estate. The value of real estate is de-

termined, when it can be, by showing the amounts paid for similar property. The same process is involved here to a large extent. We have fortunately a determination of the value of the easements. The maps show it very clearly in both blocks, on both sides of the street. Here we have an expert, qualified by knowledge, instructed to use his utmost care, because he knows that our principal object is to get to the Appellate Division something that is conformable to their decision, and that is what we are trying to do. It is
653 perfectly feasible and perfectly customary, to prove the value of real estate upon the basis of ascertained and known facts as here. We find facts established and determined by the Courts themselves in these decisions and there are plenty of them. As I say, there are eleven, as your Honor will see, which afford a reasonable basis. These determinations have all been put in evidence.

The Court: What is his theory as to valuations?

654 Mr. Nichols: This whole litigation is, as Mr. Justice O'Malley said, and as was said by the Appellate Division, without an exact parallel. None can be found, but we are determined by the basis of certain valuations made by the Court itself for the twenty properties, including those eleven——

The Court: Do you intend to call an expert?

Mr. Nichols: Yes. I will first call Mr. Fox to identify a sheet here, which was checked by the City's engineer.

Mr. Page: I should like to state that 75 per cent. of the total of the assessment assessed,

have appeared by counsel, and of that 75 per cent. about two-thirds, or 48 per cent. I represent, and in regard to this litigation, in order to save time, I desire to say that we adopt all the objections and exceptions of Mr. Lehman, and the attitude he takes, it having been the result of discussion between us all. There is one item I would like to state as bearing on this question of easements, and it is that our contention is, as well as that of the City, that the right that the Railway Company obtained from the abutting owners, to 656
impair their easements of light, air and access, could continue only so long as the special franchise continued and disappeared with the life of that franchise. A word further, our contention is that the special franchise was granted by the Rapid Transit Commission for the public convenience and necessity and when that thing dropped out, as happened in 42nd Street, with reference to the spur of the Railway Company, when it ceased to be a matter of convenience, when in fact it became a matter of non-necessity and inconvenience, and when the granting body, 657
or its successors, terminated the life of that franchise, on the ground that it no longer possessed the elements which were essential to its vitality, the entire franchise disappeared, and with it disappeared these private easements here.

Mr. Nichols: That has been addressed to the Appellate Division. I think the objections here are merely for the purpose of preserving their rights on the record.

The Court: I understand it.

658 *Claimants' Witness—Michael Fox—Direct*

MICHAEL FOX, residing at Congers, Rockland County, called as a witness for claimants, being sworn, testified as follows:

*Direct examination by Mr. Nichols:*

Q. What is your employment? A. I am engaged with the Interborough Railway as examiner and investigator.

Q. Have you been connected particularly with easement work in your office? A. I have been
659 connected with the easement work for the past twenty years in the trial, settlement and adjustment of claims, in regard to abutting property.

Q. Have you made records and become familiar with that matter during that time? A. I have.

Q. I am referring to records of all easements, whether procured by Court order or by settlement? A. Yes.

Q. Were all those payments entered upon the books of the Company for such easements? A. All payments were entered on the books of the Company in the office. The City of New York sent
660 a man, Mr. Sheridan, an engineer, who took these figures from our books. We picked them out and put them on the chart and O.K.'d them, having found them to be correct.

Q. Did the chart, which was prepared in that manner, and checked by the City, by its engineer, contain all the evidence which in any way the City desired to have for use on this trial? A. Yes, the entire evidence from the books, that they requested; there was no more to be gotten.

*By Mr. Lehman:*

Q. Mr. Sheridan did not have this chart (in-

dicating)? A. The chart that Mr. Sheridan received had the same information on as is contained on this one, absolutely (indicating).

*By Mr. Nichols:*

Q. Did you, Mr. Fox, using the exact same information, prepare for Mr. Sheridan's purposes a chart, but omitting certain columns which I directed you to omit, because in my opinion they were not pertinent; did you prepare such a second chart, containing every item which had been checked by the City? A. I did, yes. 662

Mr. Nichols: I offer that chart in evidence.

Mr. Lehman: Objected to. In the first place, it is not evidence. In the next place, it purports to contain the value of these lots by percentages, which they figure out.

The Witness: No such thing as land values on that sheet or percentage either. The sheet contains the judicial determination, the amount awarded for the fee damage.

Mr. Nichols: In view of the fact that my friend has had this chart for a week to study, I will offer 663 it in evidence to the extent of the figures showing all payments made in respect of the easements, the frontages of the property, the dates of payment, the total payments, and the easements judicially determined, constituting in all nine columns as they are numbered, but not offering in evidence as a matter of proof, but for the information of the Court only, the notes which appear at the bottom, which in a condensed form show the method used by the claimants in this case to deduce the value of the easements upon the basis of the judi-

cial determination of the values as shown on the chart. Is that satisfactory?

Mr. Lehman: You included your calculations as to the fee value and subtract them from the total value in column 9 of this chart as to the Pinchot lease. You cannot put that in as evidence.

Mr. Nichols: I am not putting that in as evidence, because those two stars in front show below in the notes that it was not separately adjudicated. It was paid after trial, and also after de-
665 termination, judicial determination of the fee value of the reversionary interest, and it was my intent to eliminate these notes, that they should be excluded from my offer of proof, being used only as an aid to the Court, because the notes show exactly, in a more condensed form than it is possible to state it, the manner in which these figures have been used and will be used upon this trial as proof. All that appears there will be proved by us. That Pinchot settlement was made. There were three adjudications of the value of
666 the reversionary interest upon the same property, and we have it there because we know the payments were made after adjudication, which would indicate a basis of the value of the leasehold interest and realty to a definitely ascertainable period of past damages, and because we want to use all the judgments as far as they are possibly available. We have attempted, subject to the ruling of the Court, to utilize this payment as to part of the title on that Pinchot property. In the Kernochan case, which involves another reversionary interest in that same property, the Court of Appeals stated there were two separate interests in the property which required a sep-

arate determination of the fee value. That determination had been arrived at, as far as the reversionary interest was concerned. There remained to be determined the value of the easement pertaining to the leasehold interest. The Kernochan case, in which that was divided, is the authority which has been followed ever since in determining questions relating to leasehold interest. Now, we feel that in that Pinchot settlement we have got a basis which does permit of our putting an exact approximation on what 668
should be the proper fee, where we do know what was the legal situation, whether undetermined legal questions entered into the compromise, but there, I am frank to say, the Court of Appeals, in determining the Kernochan case, rendered it very clear that the trial—which was had before Mr. Justice Smythe—as to the leasehold interest must be upon a basis which was definitely described. There was not anything left there to contest, although Col. James, who tried the case, said, as the record shows, that it was another novel case, but I am ready to concede, in order 669
that there shall be no uncertainty in going to the Appellate Division about it, that the payment of $36,000 for that leasehold interest was a payment representing the real value of the property not diminished by a compromise of legal questions. In doing that I am trying to arrive at a fair basis. If we eliminate this Pinchot leasehold because of the fact that only a part of the title, that is, the reversionary part, was judicially determined, we would have to fall back upon the Shaw adjudications on the other side of the street. Now, in the Shaw case the rate per front foot was $596 a front

foot, while in reference to the Pinchot property that we are discussing the basis was $545. In other words, I am trying the best I can to include fairly and fully a determination which shows a somewhat lesser value than the other determinations upon the same block. I am willing, for the sake of going back to the Appellate Division without a shadow of a question as to the calculation, to confine myself to the determination upon the reversionary interest alone, because there is a materially lower basis there than would presumably be arrived at if this entire fee had been the subject of judicial determination. Our good faith is shown by the fact that we paid $36,000 for the balance of the title, the leasehold interest, but I want to present the facts fully and fairly to your Honor, and I have put that down there showing just what it was, so that when we came to the proof we could introduce that fact for just what it was worth, and I am willing to take this determination, which is somewhat lower than the others on the block, $19,000. I am willing to throw out the balance if there is any doubt, if we cannot with the utmost clarity present to the Appellate Division a proper method to meet their decision. I do not think that I can do any more than that.

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Mr. Lehman: I should like to make a general objection to these figures if they are offered as evidence now.

Mr. Nichols: Yes.

Mr. Lehman: In order to preserve our original position in this record, we object to it, (1) on the ground that the evidence is incompetent, immaterial and irrelevant, for the reason that the Railroad Company does not own the easements of

light, air or access in 42nd Street, which formerly belonged to the abutting owners. That those easements are incapable of ownership separate and apart from the abutting property. The Railroad by the erection of its structure in 42nd Street extinguished or impaired such easements of light, air and access to the extent that the structure occupies the street and by the payment of damages to the abutting property owners in settlement of injunction suits in some cases, by voluntary settlements in other cases, by condemnation in one 674
case and by prescriptiion in other cases, it acquired the right to maintain the structure and operated it as a railroad and to continue to extinguish or impair the easements by so doing free from interference or the right of interference by the abutting owners. All that the railroad owned in 42nd Street, and all that is taken in this proceeding, are the franchises obtained from the State and the City, the elevated structure, and the right to maintain the structure and operate it as a railroad pending the life of its franchises free from interference or right of interference on the 675
part of the abutting owners. The franchises, the structures and the rights obtained from the abutting property owners constitute and can be valued only as a single entity and none of these elements has any value separated from the others. The spur could no longer be operated except at a large annual loss and the Public Service Commission, after proceedings and hearings, has determined and ordered that the spur was no longer necessary and convenient for the public convenience. Therefore, the right to run the elevated railroad in the street was of no value, and for the same

676 *Claimants' Witness—Michael Fox—Direct*

reasons the physical structure had no other than scrap value. It follows, therefore, that the right acquired by the Railroad to impair the easements of light, air and access is of no value separate and apart from the other constituent elements of the Railroad.

I am making this objection to preserve my rights on the trial.

The Court: Have you stated your objection?

Mr. Lehman: (2) Objected to as incompetent,
677 immaterial and irrelevant, because the rights of the Railroad to impair the easements of light, air and access appurtenant to the property abutting on East 42nd Street could continue only during the life of the Company's special franchises to maintain the elevated structure in 42nd Street and to operate trains and cars thereon and thereover, and under the Rapid Transit Act of 1875, such special franchises had life contemporaneous with the existence of public convenience and necessity, which was the basis upon which they were granted, and terminated with the determina-
678 tion of the Public Service Commission, successor of the Rapid Transit Commission on April 22nd, 1921, that the Railroad was no longer necessary and convenient for the Public Service and constituted an impediment and obstruction to the public use of the street, pursuant to which the City, on December 7, 1923, vested title to the property described in the special acts under which this proceeding was instituted and under the Greater New York Charter. Furthermore, I object to the testimony as to the value of the easement rights acquired by prescription, upon the ground that it is incompetent, immaterial and

irrelevant, for the reason that compensation for the alleged rights is confined and limited by the opinion of the Appellate Division, which defines the conditions under which the Company can be reimbursed. This objection I make to the evidence called for as to the rights to impair the light, air and access, which were paid for by the Railroad, as well as to such rights as the Railroad acquired by prescription. As to prescriptive rights, no money having been paid for them, they were acquired for nothing and the Railroad 680
Company had the benefit of impairing the light, air and access appurtenant to the abutting property for over forty years for nothing.

I make those objections to preserve our rights on the other record as well as to the evidence as offered in this record.

(Objection overruled; exception.)

Mr. Lehman: And upon the further ground that evidence of amounts paid is not proper evidence of the measure of damage in this case and that the judicial determinations are not binding upon the City in this case and do not furnish a 681
legal basis of the measure of damages.

(Objection overruled; exception.)

Mr. Lehman: I object further upon the ground that evidence of amounts paid is not proper evidence of the measure of damage in this case and that the judicial determinations shown on the chart are not binding upon the City in this case and do not furnish a legal basis of the measure of damages.

(Objection overruled; exception.)

Mr. Nichols: It is understood as already stated that the claimants object to the principle

682 *Claimants' Witness—Michael Fox—Direct*

of determination of value prescribed by the learned Appellate Division and for that reason and to preserve in every respect their rights they interpose at this time a formal objection to any and all evidence as to value offered upon this trial as incompetent, irrelevant and immaterial and in violation of their constitutional right to compensation for the value of the property when and as of the time taken in this proceeding and upon the further ground that a determination of
683 the value of the easements and structure taken in this procedure upon the theory that such value must be limited or determined by the results of the single use only to which they were then applied or by valuations judicially determined or otherwise prior to and not of the date of taking title and not by their availability or market value at the time of taking is wholly erroneous, illegal and unconstitutional.

(Objection overruled; exception.)

(It is marked Claimants' Exhibit B-X.)

Q. This is headed Judicial Determination of
684 Easement Values, East 42nd Street Spur. The first column shows the street numbers of the abutting properties; the easements are abutting on the 42nd Street Spur? A. Yes.

Q. Does that include the entire frontage on the spur, on both sides of 42nd Street? A. Yes.

Q. The second column contains various letters and figures; what are those? A. Column No. 2 refers to the exhibit number of the conveyance, as placed in evidence in the record that is now before the Court on the previous trial.

Q. Do those exhibit numbers refer to the conveyance and releases in respect of all the prop-

erty to which they are attached on this sheet? A. Yes, they do.

Q. The third column states the method in which the title to the easement was acquired, abutting each property? A. Yes, judgment in one case, prescription in another, and settlement in others, and one in condemnation.

Q. Does column 4, state the name of the owner? A. Yes.

Q. And column 5? A. The frontage involved.

Q. And the aggregate of that frontage is the 686
aggregate of the entire frontages abutting on the elevated railroad spur? A. Yes, sir.

Q. In regard to prescription, how many prescriptive titles are here? A. Three parcels.

Q. What is the frontage shown? A. They are indicated on here as 403 feet 5 inches.

Q. As shown on the former trial and as the decision of Mr. Justice O'Malley described them? A. Yes.

Q. The 6th column is what? A. The date of value determined; that is, the date of the actual trial when the experts testified to the value of the 687
properties which were then being judicially determined.

Q. Have you any notation at the bottom of the statement of facts which is in evidence, any statements as to the average date of those judicial determinations? A. Yes; the average date of the judicial determinations was July 2nd, 1898.

Q. Did you make the calculation depending on that date? A. Yes.

Q. Did you determine from our records the date of acquisition of title by prescription? A. Yes.

688 Q. What is it? A. August 26, 1898, in each case.

Q. What is the 7th column? A. The 7th column shows the date or time we paid these parties and the amount of money.

Q. And the average of those dates, the dates of acquisition of the easements, appears as July 2, 1898? A. Yes, that would be correct, July 2, 1898.

Mr. Lehman: I should like to interpose an ob-
689 jection here, as to average dates of judicial determinations. In other words, the Appellate Division has held that the value as to each lot shall be upon the basis of the date of judicial determination, at the time of the acquisition of the rights. They have averaged this.

The Court: Is the date there upon which they acquired it?

Mr. Nichols: That is given specifically in each instance, but, as a matter of fact, for the information of the Court, there is an average date.

Mr. Lehman: It is not evidence.

690 The Court: It is a summary. Put it in to save time, and to make it clear it is considered in evidence.

Mr. Lehman: I want to interpose an objection to this paper, in so far as it states that there was any average judicial determination, which could have any legal effect or be evidence in this case.

(Objection overruled; exception.)

Q. What is the 8th column? A. The 8th column shows the amount, total amount paid these property owners.

Q. Upon the acquisition of the easements? A. Upon the acquisition of the easements, yes.

Q. And the 9th column? A. The 9th column is entitled "Easements judicially determined," and that column represents the amount the Court awarded for the fee in the judgment. There is "No element of rental damages or costs," nothing except the figure of fee damage which was awarded by the Court.

Q. And it is upon the figures in that final column, always excepting the figures $19,742.25, about which we shall give some testimony, and the disposition of which will rest in the discretion of the Court—but as to all the others, those are the figures of the judicial determinations that the Appellate Division refers to and only such? A. Yes. 692

Q. Did you prepare two separate sheets, one of which is entitled "Judicial Determinations, East 42nd Street, Lexington Avenue to Park Avenue," and the other "Judicial Determination, East 42nd Street, from Third Avenue to Lexington Avenue"? A. I did.

Q. Showing the positions and dimensions of the property frontages and amounts awarded, separating the fee award, stated in the 9th column of the sheet now in evidence, from the damage award, costs and interest in each instance? A. Yes. 693

Q. Were past damages awarded with respect to all of the eleven cases? A. No, sir. In the condemnation suit, referring to 148-154 East 42nd Street, there was no rental damage whatsoever in this $5,000 figure,

Q. But the rental and other items of the award appear in their completeness on these sheets? A. In the Westcott case there was no rental damage whatsoever awarded there.

Mr. Nichols: I offer in evidence the sheet entitled "Judicial Determinations, East 42nd Street, Lexington Avenue to Park Avenue."

Mr. Lehman: I make the same objections as I have just made to the chart which was received and marked Claimants' Exhibit B-X.

Mr. Nichols: I also renew the objections already made.

(Objections of both parties overruled; exception to both parties.)

(It is marked Claimants' Exhibit C-X.)

693 Mr. Nichols: I offer in evidence sheet entitled "Judicial Determination, East 42nd Street, 3rd Avenue to Lexington Avenue."

Mr. Lehman: I make the same objections as I have just made to the chart which was received and marked Exhibit B-X.

Mr. Nichols: I also renew the objections already made.

(Objections of both parties overruled; exception to both parties.)

(It is marked Claimants' Exhibit D-X.)

696 Mr. Lehman: These sheets show interest paid. We wish to object to any evidence as to interest and costs appearing on these sheets. They are not entitled to interest and costs.

Mr. Nichols: We are not going to use that at all.

The Court: The fact that all those items are on there is of no consequence.

Mr. Lehman: If he says he is not going to claim it, that is sufficient.

Mr. Nichols: We will pay no attention to anything except damages awarded, but we were unable to ascertain on what basis the City was

intending to appeal from the decision of the Appellate Division so we gave every bit of information about the past damages and so on, and there is a larger sheet here which gives a great deal more information.

*Cross examination by Mr. Lehman:*

Q. On this sheet, as to which you have testified, did you make these entries at the bottom, showing front footage and the front footage paid for, the average? A. Yes, I made the computations, the frontage so much, and the total amount of the award so much, and the average per front foot. 698

Q. How about the Pinchot lease, 150 feet, that we have been talking about? A. That was included in that calculation.

Q. You included it? A. Yes.

Q. You included that 150 feet also in the Winthrop, Kernochan and McKim—— A. (Interrupting.) No, the 150 feet was not duplicated.

Q. Didn't you add it to the total of 858 feet 6 inches? A. No, sir. 699

Q. Is not $19,000, added to $159,000, the total at the bottom? A. Yes, the $19,000 is in it.

Q. Have you not excluded the 150 feet in arriving at your average? A. No, the 150 feet covers the Winthrop, Kernochan and McKim properties, as regards the reversionary interest. This covers the leasehold interest on the same frontage, so we do not duplicate it.

Q. You have added in $159,242, the total frontage, or awarded a total of $159,242? A. Yes, the $19,000 is in there.

Q. You put the $19,000 in there? A. Yes, sir.

700 Q. How about the other amounts you added in? A. 150 front feet——

Q. You left it out? A. Left it out; used 150 feet.

Q. If you put it in the amount you would reduce the average? A. Yes, it is the same property, so it would not be duplicated.

Q. So that average front footage is not correct? A. Yes, it is correct. How can you have 300 feet front where you only have 150?

701 Q. I ask you, would you not reduce the percentage, if you used that 150 feet? A. If we had used the 150 feet extra, we would have reduced the percentage, yes.

Q. So you didn't use it? A. Because there was only a piece of property 150 feet frontage there; we could not add another 150 feet.

Q. You included the $19,000 that you paid for it? A. Yes.

Q. Why didn't you include the frontage, if you included the price? A. Why not? Because you are increasing the frontage and we had no such

702 object in mind at all. It was 150 feet frontage. There was a reversionary interest paid for, the fee, and the same 150 feet frontage was a leasehold, but we confined ourselves to the same 150 feet frontage all through the calculation.

*Redirect examination by Mr. Nichols:*

Q. There were four easements in reference to that 150 feet frontage? A. Yes.

Q. Three of them, the judicial determinations, related to a portion of the title, the reversionary portion? A. Yes.

Q. And the fourth, the $36,000, was a payment

made after trial, after the judicial determinations had been made, as to the balance of the title, relating to the same piece of property? A. The same piece of property, yes.

Q. So that the four together involve or represent the total amount paid for the easements on that property? A. On that 150 feet frontage.

Q. And the amount paid under the Pinchot leasehold was $36,000? A. Yes.

Q. And the amount that is placed in here, with the star, showing exactly the conditions under which this was paid, was the result of a calculation made, in which we have endeavored to deduct everything that should be attributable to the past damages? A. Yes. 704

Q. And the manner in which we would do that in the ordinary conduct of our business? A. Yes.

*Recross examination by Mr. Lehman:*

Q. Now, Mr. Fox, the total of column 9 is $194,942, and the $19,000 is part of that total, is it not? A. Yes.

Q. That was not judicially determined, was it? A. The $19,000, no. 705

Q. Now, Mr. Fox, why didn't you deduct the $19,000 from that $194,000, making up your total amount, which you used for the purpose of arriving at your average? A. Well, I suppose the circumstances attaching to the fact of the Judge having died when the case was being tried——

Q. No, you included that in the total amount. When that is deducted your average would be smaller? A. Yes.

Q. And it should be deducted, should it not? A. That I couldn't say.

Q. Well, it is not the fee damage, is it? A. Well, we have figured it out to be part of the $36,000, which was paid in the settlement. This $19,742.25 represents the amount for the fee in that $36,000.

Q. Will you exclude the $19,000 odd for the lease from the total amount that you have used for your computation, and tell me how much was the actual amount paid for fee damage, according to this sheet? A. Well, it would be $194,942.24, less $19,742.25.

707

Q. How much is that? A. $175,199.99.

Q. Now, that represents the total of all the fee damages that you know about? A. It represents the judicial determinations, yes, fee damages.

Q. Now, look at that column. You have left blank the date of value determined in the settlement cases? A. Yes.

Q. Can you tell me what those dates are? A. The date would be the date of payment, the same dates as the date of payment, because there was no judicial determination there, and the only date that can be taken is the date when it was paid to the parties.

708

Q. And those are the same dates as the dates appearing opposite the settlement cases in column 7? A. Yes.

Q. Now, you made the computation of $19,742.25 fee damage on the Pinchot leasehold? A. Well, we have that calculation all typewritten out.

Q. You said you made the calculations? A. I did not make that particular one. We have it typewritten, and I believe a copy of that calculation was given to your engineer, Mr. Sheridan, as far as I remember.

Q. Who made the calculation? A. One of the men in my office. I did not make it myself personally.

Q. Do you know who it was? A. I couldn't say his name. There were four or five men working on it.

Q. I want to know from your recollection about the $19,742—— A. (Interrupting.) Didn't you receive the calculation? A copy was typewritten, which Mr. Nichols sent over to your office.

Q. No. 710

*By Mr. Nichols:*

Q. You handed it to counsel on the other side? A. Yes, and also to the counsel for the property owners.

*By Mr. Lehman:*

Q. Can you tell me how it was done? A. I can't say exactly. I didn't make that.

Q. You prepared this sheet (indicating)? A. I prepared this sheet, yes.

711

*By Mr. Nichols:*

Q. If there were omitted from those calculations the awards in respect to the so-called Pinchot property, which relates to the reversionary interest only, the Winthrop, Kernochan and McKim judgments, if they were eliminated because they represent a determination as to only a part of the title in fee, would the result be that the percentage would be greater or less as the average value per front foot? A. Why, it would be greater.

Q. So the result of the inclusion of those prop-

erties is to diminish and not increase the rate per front foot, is that right? A. Yes.

Q. I show you a sheet, entitled "Method of Computing Value of Pinchot Leasehold," and ask you is that the sheet you handed to counsel (handing witness)? A. Yes. This explains the method by which the $19,742.25 in the Pinchot leasehold represents 82.35 per cent. of the fee damage.

Mr. Nichols: I offer it in evidence.

Mr. Lehman: Same objection as made before.

713 (Objection overruled; exception.)

(It is marked Claimants' Exhibit E-X.)

*By Mr. Lehman:*

Q. You say that if you omitted certain items it would increase the percentage per front foot? A. Yes.

Q. The average per front foot? A. Yes.

Q. That statement refers only to the frontage between Park and Lexington Avenues, does it not? A. Well, it refers to any frontage.

Q. You have an average front footage on 42nd

714 Street, between Park and Lexington Avenue, and you use 568 as the amount per front foot, the average per front foot for the frontage only between Park Avenue and Lexington Avenue? Isn't that right? A. That is Park to Lexington.

Q. Now, you have 840 feet total as the frontage between Lexington and Third. So if you combined those two, you would very much decrease the percentage, would you not? A. You would in some regard, yes.

Q. You would very much decrease the average? A. The average front foot, yes.

*By Mr. Nichols:*

Q. Did you hand to Mr. Lehman and Mr. Page a copy of a calculation made upon the basis of including all? A. Yes, sir.

Q. And also a computation made on the north side and south side separately? A. Yes, sir.

Q. So that there should be no delay in the trial of this case, by reason of the failure of the other side being thoroughly informed as to all the figures which they might want to use on this trial? A. Yes, and we have a copy of the calculation 716 here.

Q. And that was given to them? A. Yes, sir.

*By Mr. Lehman:*

Q. What was the average front footage, taking the blocks in that way? A. I can get it. I haven't it here. This is a statement entitled, "Valuation of Easements Acquired by Judicial Determination."

Q. You made that up? A. Yes, on the basis of the front foot value, applied to those acquired by purchase and prescription; Park Avenue to Third 717 Avenue, both sides of 42nd Street, foot frontage 711 feet 3 inches; amount paid for fees $194,942.24; average per front foot $274.08; the prescription frontage was 403 feet 5 inches, and calculated on $274.08 a front foot, it would be $110,568.44. The settlement frontage was 583 feet 10 inches, and at the same rate per front foot, $160,017.04, making a total of $465,527.72. Now, we made other calculations.

Q. That is the only one I want to know. A. The same sheet contains calculations in three other methods, giving different totals. That is in round

718 *Claimants' Witness—Robert Huntley—Direct*

numbers $100,000 less than the aggregate on this exhibit here. This is sheet Exhibit B-X (indicating).

ROBERT HUNTLEY, residing at Ridgewood, New Jersey, called as a witness for claimants, being sworn, testified as follows:

*Direct examination by Mr. Nichols:*

Q. What is your business? A. Real estate broker and appraiser; City of New York.

719 Q. With whom connected? A. The office of Joseph P. Day, Inc., 67 Liberty Street, New York City.

Q. What is the nature of your duties in connection with that employment? A. I have charge of all the appraising and actually have acted as a broker.

Q. How long have you been familiar, by reason of your real estate activities, with values on 42nd Street? A. Since 1898.

Q. At that time, did you have knowledge of values and condition of property on that street?

720 A. Yes; in 1898, in connection with sales on 42nd Street, or rather, they were in the nature of making exchanges of some property on 42nd Street with property in the Bronx.

Q. How long have you been familiar with the elevated railroad structure in 42nd Street? A. At least since 1890.

Q. Have you testified in many cases for the City of New York? A. I testified in a number of cases for the City of New York.

Q. Have you prepared a typewritten sheet of

appraisals that you have made of property in that immediate vicinity? A. I have.

Q. Will you state what those properties were? A. I appraised the Grand Central Hotel, and gave testimony, when it was condemned for the subway; The Manhattan Storage Warehouse Building, Lexington Avenue and 42nd Street; appraised the Commodore Hotel and the leasehold.

*By Mr. Lehman:*

Q. Give us the dates for that? A. I haven't it. 722
It has all been done in the past twenty-five years.

*By Mr. Nichols:*

Q. Please proceed. A. The Long Beach Building, which is now the site of the Chrysler Building; Loew's Theatre, Lexington Avenue and 42nd Street; southeast corner of Lexington Avenue and 42nd Street; southwest corner of 42nd Street and Third Avenue; northwest corner of 42nd Street and Third Avenue; the Vanderbilt Building, corner of 42nd Street and Vanderbilt Avenue; I appraised the Belmont Hotel property; also ap- 723
praised the lease; appraised the leasehold of part of the Heckscher site, 42nd Street and Madison Avenue; appraised the Manhattan Hotel; appraised the Union Carbide Building, Madison Avenue and 42nd Street.

Q. For the purpose of the record on appeal, I think you better state the properties that are on the line of the spur, and those in the immediate vicinity. A. These are all in the immediate vicinity of the spur. I appraised the Grand Central Terminal, the land; I appraised all of the land included in the right of way of the New York &

Harlem R. R., the New York, New Haven & Hartford R. R., lying between 42nd Street and Westchester Line. Going further west to Madison Avenue, I appraised the southwest corner of Fifth Avenue and 42nd Street; the northeast corner of Fifth Avenue and 42nd Street; the northwest corner of Fifth Avenue and 42nd Street; 11-27 West 42nd Street; the Aeolian Building on 42nd Street; The Fleischman Baths, 6th Avenue and 42nd Street; northwest corner of 42nd Street and Sixth Avenue; southwest corner of 42nd Street and Sixth Avenue; the land and also leasehold of the Knickerbocker Hotel, Broadway and 42nd Street; the Lyric Theatre on 42nd Street, the New Amsterdam Theatre on 42nd Street; the Rialto Theatre at Seventh Avenue and 42nd Street; The American Theatre at Eighth Avenue and 42nd Street; the Hermitage Hotel, Seventh Avenue and 42nd Street.

Q. Were many of these properties on the line of the spur? A. Yes, a number of them.

Q. The Commodore Hotel? A. The Commodore Hotel; the Chrysler site; Loew's Theatre; 42nd Street and Third Avenue, two corners; Grand Union Hotel.

Q. Did you testify in the former trial as to the value of easements on 42nd Street? A. Yes, sir.

Q. Did you testify as to the value of easements of light, air and access, taken by the elevated railroad structure, in the rate case involving the Park Avenue Viaduct? A. Well, in that rate case I testified as to the value of the rights of way of the railroad in Park Avenue up above 100th Street, that was occupied by an elevated structure.

Q. In the street? A. In the street.

Q. Did you testify again in the case involving

elevated railway easements upon 110th Street, in the case tried before the Interstate Commerce Commission? A. I did.

Q. Were those easements of light, air and access in Park Avenue acquired for an elevated railway structure? A. Well, they were occupied by an elevated structure, yes.

Q. Were they similar to the easements acquired by the elevated railroad structure on 42nd Street? A. Very similar, I should think.

Q. Did you appraise this property? A. Yes, I appraised that. 728

Q. Did you value those elevated railway easements of the Harlem Railway on the basis of the value of abutting property? A. I did.

Q. Are you familiar with the condemnation of the easements of light, air and access, taken by the elevated viaduct on Park Avenue, across 42nd Street? A. Yes.

Q. And with the easements in that vicinity taken for the subway, under the Belmont Hotel and Commodore Hotel? A. Yes.

Q. Have you appraised those properties? A. Yes. 729

Q. And the value of the easements of the Astor Hotel? A. Well, the Old Astor Hotel down at Broadway and Vesey Street. I appraised the easements of that property.

Q. And a great many other properties around the city? A. Yes, sir.

Q. Have you compiled a list of the properties, as to which subway easements were taken? A. Yes, I made a list of all those things.

Q. Did you have some of those properties for sale? A. Yes.

730 *Claimants' Witness—Robert Huntley—Direct*

Q. Did those sales show definite percentages of the value of the easements to the properties taken? A. Yes.

Q. Were any of the easements purchased by the City upon the basis of the percentage of the value of the land? A. Yes.

Mr. Lehman: Objected to, any evidence as to specific sales.

The Court: He is qualifying him.

Q. Have you read the opinion of the Appellate
731 Division, 229 App. Div. 617, prescribing the method for determining upon this trial the value of the easements of light, air, and access taken in this proceeding? A. Yes, I have read it.

Q. What do you understand that method to be?

Mr. Lehman: Objected to, the witness not qualified.

The Court: I think not.

Q. Have you made calculations of the values of the easements of light, air and access, appurtenant to the property abutting on the East 42nd Street spur, taken in this proceeding, upon the
732 basis of the values judicially determined at the time of the original acquisition of these rights? A. I have.

Q. Upon what basis did you make that determination? A. I made a study of the properties affected by these judicial determinations and determined that the properties were located in two different zones. The first zone would be the property between Park Avenue and Lexington Avenue, which was more valuable for use and for sale, at the time of the acquisition of these easements, and it continued to have that same relative status up to the present time.

Mr. Lehman: Objected to, the witness testifying as to value.

(Objection sustained; exception.)

Mr. Nichols: In view of the fact that this witness has already testified on the former trial as to certain values of these easements and is now asked again to testify upon this trial, upon an entirely different basis, I wish as part of the qualifications, to show that the values were upon an entirely different basis and are not inconsistent.

The Court: It is not part of your direct. 734

A. Shall I say what I did?

The Court: Wait for a question.

Q. I will ask, subject to the Court's discretion as to propriety at this time, if the property upon the line of the spur is of the same general character along the line of the spur, or whether in your analysis which I shall ask you about, you have divided it into more than one zone? A. I have already said that I divided it into two zones, the first zone between Park Avenue and Lexington Avenue, and the second zone between Lexington Avenue and Third Avenue. 735

Q. Are you familiar with the judicial determinations of values of easements on East 42nd Street in front of the railway? A. Yes, sir.

Q. And you were familiar with them at the time you testified at the other trial? A. Yes, generally; I hadn't made as much of a study as I have since, but I had a knowledge of the judicial determinations then.

Q. Have you upon this trial applied to the values of the easements at the time of their original acquisition by the Manhattan Railway Company the judicial determinations, with which you are familiar? A. I don't understand that question.

736 Q. Have you appraised the value of the easements of light, air and access, taken in this proceeding, upon the basis of the judicial determinations, as of the time when the easements were originally acquired by the Manhattan Railway Company? A. Well, what do you want? Have I appraised these easements as of 1898, or something like that, or have I applied them as of the time of the vesting of title? I don't know what you mean.

737 Q. I said as of the time of the original acquisition, which averages 1898? A. I have.

Q. Assuming that the value of these easements is now to be ascertained upon this trial, on the basis of the judicial determinations of their value, as of that average date, 1898, but assuming that the value so ascertained was neither greater or less at the time of the vesting of title, December 7th, 1923, have you ascertained upon what basis, the value of the easements, as determined by the judicial decisions? A. Yes, sir.

Q. What did you find the value to be?

738 Mr. Lehman: I object upon the ground that it is incompetent, irrelevant and immaterial, especially;

(1) Because not based on established facts.

(2) Further because it is not the proper measure of damage in this case.

(3) As to the unauthorized assumption of fact in the question that there is an average date of the acquisition of these rights by the Railroad except the average date of the acquisition of rights by prescription; the judicial determinations are spread over a number of years and the opinion of the Appellate Division requires the as-

certainment of the value of each right at the time that particular right was acquired by the Railroad.

(4) I object to it further upon the ground that it is speculative and conjectural.

(Objection overruled; exception.)

A. $500,382.55.

Q. In making that appraisal, did you exclude all payments made for easements of light, air and access appurtenant to the leasehold interest of the Pinchot property? A. I did.

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Q. Will you state the basis upon which you made the appraisal of $500,382.55, taking the judicial determinations of value as the basis of your determination?

The Court: The basis? Let us have the items of this $500,382.55. Divide it into its component parts.

Mr. Nichols: Yes, I shall do that.

The Court: Basis is theory, not figures.

Mr. Lehman: It is understood that my two first objections apply to this witness's testimony now.

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The Court: Yes.

Mr. Lehman: Also this objection; I object to the testimony as to value, on the ground that it is incompetent, immaterial and irrelevant, because they are not entitled to it, and also on the ground that any averaging is a mere speculation, and not evidence of value as to any of these rights.

(Objection overruled; exception.)

Q. Will you itemize it? A. The method of calculation by which I arrived at this?

Q. That is what I asked you for? A. Follow-

ing out the judicial determinations, I found this, that in the first zone there are five properties that were affected by judicial determinations: on the south side of the street there were two parcels belonging to Shaw, which comprised 130' 1" frontage. The judicial award for the easements of light, air and access was $77,500. On the north side of the street there were three parcels, the Winthrop parcel, 75 feet, and the award was $31,000; the Kernochan property, 50 feet front-
743 age, and the award was $20,666; the McKim parcel, 25 feet, and the award was $10,333. The total of those awards is $139,500. The properties affected had 280 feet 1 inch front footage. That equals $498.07 per front foot or lineal foot. In this proceeding there are 865 front feet affected. 865 feet at $498.07 equals $430,830.55. In the second zone there are six parcels affected; the Goelet piece on the north side, 52 feet 10 inches, the award was $4,500; the Hernon piece, 25 feet, the award was $1,500; the O'Brien piece, 25 feet, the award was $2,200; the Westcott piece, 50 feet, the
744 award was $5,000; the Renwick piece, 83.4 feet, the award was $5,000; the Goelet piece at Lexington Avenue, 195 feet, the award was $17,500, making total awards there of $35,700. The total frontage was 431 feet 2 inches. That equals $82.80 per front foot. In this proceeding 840 feet are affected. 840 front feet at $82.80 equals $69,552.00. Adding those two sums together, we have for the first zone, $430,830.55; for the second zone, $69,552.00, and the sum of those two is $500,382.55.

Q. What was the Pinchot leasehold? A. The Pinchot leasehold covered a part on the north side

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of 42nd Street, at the corner of Depew Place, 150 feet front on 42nd Street, running through to 43rd Street, a three and six-story building, which belong to the lessee. The lease was carried on since 1857, and the expiring date is 1932.

Q. Did the judicial determinations, which you applied in the itemized method of estimating the value of the easements at the time of their acquisition, relate only to the reversionary interest in this Pinchot property? A. Yes.

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Q. You have excluded apportioning any value to that part of the title carved out for the leasehold? A. Yes.

Q. Have you endeavored in any way, in the light of these determinations of the value of the reversionary interest, to determine what, in your judgment, is the sum properly apportionable to the fee of the leasehold? A. Well, I accepted a calculation which I found, which seemed to me to be correct, by taking away the past damage and interest calculation from the total settlement, which left a value for the easement appurtenant to the leasehold of $19,742.

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Mr. Lehman: I object. It is incompetent and hearsay and I move to strike out the answer.

(Motion denied; exception.)

Q. Was that taken by you as representing the fair and reasonable value of the leasehold interest, based upon your knowledge of the judicial determination? A. Yes, sir.

Q. Using that figure of $19,742, supplementing the determination by the Court of the value of the three reversionary interests, did you estimate the value of the easements as a whole, including that item of $19,742? A. I did.

748 *Claimants' Witness—Robert Huntley—Direct*

Q. What was your appraisal upon the basis of that inclusion? A. $557,651.83.

Q. Including the item of $19,742.25, what would be the average per front foot for the easements awarded? I am speaking only of the Pinchot property? A. $545 per front foot.

Q. Have you calculated what is the rate per front foot as shown by the two Shaw judgments, on the other side of 42nd Street, opposite? A. Yes; $596 per front foot.

749 Q. Did you recognize the fact, in determining the propriety of $19,742, as fairly representing the amount apportioned to the fee of the leasehold, that the Shaw judgments on the other side indicated a front foot value higher than the value of the Pinchot property, including that item? A. I recognized that fact.

Q. Did you examine the testimony in the cases where the Court reached its determinations of fee values? A. I did.

Q. Did you take into consideration the testimony that was before the Court in those cases, as
750 well as your experience, in determining whether the values on both sides of the street were materially different, or otherwise? A. Yes, I did take it into consideration.

Q. What was shown by the testimony in those cases as to the difference between the values on the north side and south side?

Mr. Lehman: Objected to.

(Objection sustained; exception.)

Q. So you took into full consideration all the facts that were given in those cases, as the facts upon which you based your opinion? A. Yes, sir.

Q. And in reaching your determination, that

the property was different in the two zones which you have mentioned, in your estimate of damages, were you aided by an examination of the testimony which was given at the time in reference to the fees of these properties? A. Yes, sir.

Q. Are you independently familiar with the nature of the improvements in the two zones? A. I am.

Q. Will you briefly state those improvements? A. In 1898.

Q. Yes, about that time? A. At that time, the Northwestern Hotel, or Westchester Hotel, or 752
Grand Union Hotel—it had all of these names,—was at Park Avenue and 42nd Street. They had some vacant land, with one-story stores next to that. There was the car barn of the Street Railway, on about a fifty foot plot. Then they had the Manhattan Storage Warehouse on the south side. On the other side of the street you had the Grand Central Station. Depew Place was open. There was the McKim, Kernochan and Winthrop parcels, 150 feet by 200 feet through to 43rd Street, with stores, and manufacturing concerns, 753
known in those days as wall paper factories; then you had the Home for the Ruptured & Crippled. Going across the street, you had a lot of small buildings; you had a number of one-story buildings and stores; then you had some three and four-story tenements and stores and on the corner of Third Avenue a saloon and Hotel upstairs. On the north side of the street you had the old Vanderbilt Hotel, a five-story, brick structure, on the corner of 42nd Street and Lexington Avenue and back of that on 42nd Street you had some five-story flats, with stores, and below that you had

some four-story tenements and stores, with saloons and restaurants generally; you had the Westcott Express near Third Avenue, and then on the corner you had a two-story brick building with stores.

Q. The Westcott Express was a stable? A. A stable, Westcott Express Company.

Q. How did the values in the two blocks, east and west of Lexington Avenue, compare? A. The land in the block west of Lexington Avenue was
755 worth at least twice and probably two and a half times what it was worth in the block between Lexington and Third Avenue; and rents were higher.

Q. Did the values in the block run about the same, between Park Avenue and Lexington Avenue? A. Approximately the same.

Q. Was that also true in the block between Lexington Avenue and Third Avenue? A. Approximately, yes.

*Cross examination by Mr. Lehman:*

Q. Mr. Huntley, when you speak of the values
756 running along about the same in these two different zones, you are speaking of 1898, are you not? A. Yes, in those years right along from 1890 to 1900.

Q. When did you go into the real estate business? A. In 1898.

Q. You did not go into the real estate business until 1898? A. No.

Q. You had not had any experience before that in appraising property? A. No.

Q. What was your business just before you went into the real estate business in 1898? A. Bookkeeper.

Q. Are you not mistaken; didn't you go into the real estate business in 1899? A. 1898. That was when I got my first money as a realtor up in the Bronx.

Q. On the first trial you testified you went into the real estate business twenty-five years before the day you were on the witness stand? A. I think I testified I went in there with Joe Day, in 1901, and I had three years more experience before that.

Q. You testified you entered the real estate 758
business twenty-five years before that day. Would that be in 1898? A. I might possibly have made a mistake of a year. I had a lot to think about. I know I have been in the real estate business long enough to have some experience anyway.

Q. In valuing the Pinchot leasehold, you said you valued the lease; is that right? A. Yes; Pinchot had a lease on the land and he owned the building.

Q. And the value which you have given here as your opinion was the value of the leasehold? A. The value of the easements appurtenant to the 759
leasehold.

Q. The value of the easements? A. Yes.

Mr. Lehman: Then I move to strike out the testimony as absolutely incompetent, immaterial and irrelevant, the value of the easements.

The Court: I deny the motion.

Mr. Lehman: He is valuing an easement. As a matter of fact, the figures of the judicial determination was an amount which represented the lessened value of the real estate, the abutting real estate.

760 The Court: He has given you a figure by which he reaches a result.

Mr. Lehman: I reserve my exception.

Q. Now, you mentioned in your qualifying testimony various transactions, one of which was the exchange of property on 42nd Street for property in the Bronx? A. I didn't say I exchanged it; I tried to.

Q. I understood you to say you had? A. No. I was working on it.

761 Q. What year was that? A. 1898.

Q. That was the first transaction you had in 1898? A. The first thing that hit 42nd Street.

Q. Prior to that time you had been a bookkeeper? A. Yes.

Q. You have given values here, and I understand you to say that they are based on your reading of the records of these cases, which values have been judicially determined? A. Yes.

Q. Is that right? A. Yes.

Q. You based everything you testified to here on what you read in those records; is that right?

762 A. Well, so far as my calculations are concerned, they are all based on those records.

Q. Isn't this what you have done? You have taken the sum of these amounts and the sum of these footages and made an average? A. Yes, sir.

Q. Just a mathematical computation? A. Yes, sir.

Q. Is that right? A. Yes.

Q. The same thing that is on this chart? A. Well, I don't know anything about the chart.

Q. You did not attempt to make a valuation of

any one of these properties in 1898, did you? A. What?

Q. You did not attempt to make a valuation of any one of these lots in 1898? A. No.

Q. And you can't say now what the value of any one of them was in 1898? A. No. I could figure it if you want it.

Q. I asked you what your testimony is based on? A. I haven't given anything except the judicial determinations, that is all.

Q. And we have those on this chart. I want to 764
find out from you how you came to the conclusion that the total values that you have given here amount to $500,382.55; that was simply a matter of averaging? A. Because the Courts decided it. It was only a matter of mathematical calculations for me. That is the basis of it, that is all.

Q. I want to take you over these several lots. Did you know, in 1898, so that you can testify to it today, what was the condition of any one of these lots, which you have enumerated in your testimony? A. Well, I told you that I was familiar with the street.

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Q. Just generally familiar? A. With the buildings, yes.

Q. What was the earliest appraisal you made on 42nd Street? A. I couldn't say that.

Q. About? A. I couldn't say.

Mr. Lehman: If your Honor please, I move to strike out the testimony of this witness, because it is absolutely incompetent, irrelevant and immaterial. Not only that, but it is hearsay and inadmissible. He has read the testimony of witnesses in other cases, and comes here and applies it merely for the purpose of enabling him to make

a mathematical computation. Now, we do not need any expert witness for that purpose. They have given us what they paid for the lots, and they said, "We paid this much for these lots and the front footage in the judicial determinations was so much, and we can average it, and that is what we are entitled to receive." This testimony is purely hearsay, and besides that he is applying the value of the lots in the higher priced zone to the lots in the lower priced zone.

767 Mr. Nichols: Pardon me, not at all.

Mr. Lehman: Haven't you the values on the two blocks——

Mr. Nichols: We are not giving the values for the two blocks. We have two zones and are applying the judicial determinations in each zone only to that zone.

Mr. Lehman: When you apply them to both zones you are getting a larger percentage.

Mr. Nichols: We do not apply them.

Mr. Lehman: The witness has applied them to these separate zones, and I say it is improper, because the value of any lot in any one of these

768 zones is no criterion of the value of any other lot in that zone or any other zone, and especially is no criterion for making a general average calculation on which to base a judgment of value.

(Motion denied; exception.)

Q. Now, I will ask you one more question. You stated, in your qualifying testimony, that you made up your mind about the valuations of these properties upon the basis of those judicial determinations? A. Yes.

Q. Let me ask you this: Do you know what the basis of those judicial determinations was? A. The basis?

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Q. Yes. You said you acted upon the basis of those judicial determinations? A. The judicial determinations were the basis; not the testimony of anybody. If you take my calculations you will find that I have used the judicial determinations, judicial determinations of values. For example, there was a damage to the fee in the Shaw case of $77,500. The Judge said that, the Court. In the Winthrop case the Court said that the damage to the fee by reason of the loss of those easements was $31,000; in the Kernochan case the Court said

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that the damage to the fee by reason of the loss of those easements was $20,667; in the McKim case the Court said that for the damage to the fee, by reason of the loss of the easements of light, air and access, the damage was $10,333. Now, the sum of those four decisions right in there, the awards, were $139,500. I have nothing to do with that. The Court said that. All I did was to take the footage, 280 feet, and divide that into $139,500, and I got the figure of $498.07 per lineal foot, and I applied that to all the land that was affected there. It is not my result; that is not

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my opinion. I am merely following the order of the Court.

Q. You have put the value yourself on those so-called easements at $500,382.55, or whatever your figures were? A. I put it on because that is my calculation based entirely on valuations which were fixed by the Court at previous times.

Q. You are not testifying as an expert to the value of these easements, are you? A. No; the basis is the judicial determination. That is absolutely the fact.

Q. Don't you mean that you just simply aver-

aged those things; you made an average? A. I mean to say that I made a calculation here. I calculated the value of the easements.

*By the Court:*

Q. Did you act as a bookkeeper or as a real estate man? A. I acted as a real estate man and figured out these things.

*By Mr. Lehman:*

773 Q. As a real estate man you made these computations? A. Yes, certainly.

Q. And you are engaged here to appraise the value of this property or to make this computation? A. I was engaged here to appraise the value of this property, in a limited manner.

Q. That is what I am getting at. What was the limitation? A. The limitation was that it must be based upon the judicial determinations made at the time the properties were acquired by judicial determination.

Q. Now, do you know when these properties
774 were acquired? A. Well, I saw the record of it. I saw that they were acquired at various times, at various dates; that there were court actions, and they finally arrived at decisions.

Q. I didn't mean that. Do you know when any of these rights claimed by the Railroad were acquired by the Railroad? A. I think that is a question for a lawyer, I presume that the easements were taken when the structure was erected and operated in 1878.

Q. I am not asking you about that.

The Court: We will take an adjournment now. Adjourned to tomorrow morning, at 10 A. M.

New York, December 9, 1930.

(Trial resumed.)

ROBERT HUNTLEY resumed the stand for further cross examination.

*Cross examination (continued) by Mr. Lehman:*

Q. Mr. Huntley, I want to be sure about this. What do I understand to be the figures that you gave as the total value that you computed by applying the front foot values adduced from the adjudicated cases; what was the total value which you gave? A. $500,382.55. 776

Q. In column 9 of this chart which you have before you—— A. (Interrupting.) I haven't any chart before me.

Q. You did have when you testified yesterday? A. No.

Q. You referred to it yesterday? A. Did I refer to the chart? I don't think so. If there is a chart I would be glad to refer to it.

Q. Did you have that in front of you? A. No, sir. 777

Q. Well, column 9 on that chart, we have the figures $19,742.25? A. Where is that?

Q. In column 9? A. Yes.

Q. Opposite the Pinchot settlement? A. Yes.

Q. You included that sum as one of the amounts of fee damage? A. No.

Q. You left it out? A. Left it out.

Q. Did you make any computation on that $19,742.25 at all? A. No, I did not, personally.

Q. You did not? A. No.

Q. But it entered into the averages? A. It did not. I have not testified about it at all, except

778 I think I was asked later if I had included it, what would my figures be, but in that calculation I have testified to here it was not included at all.

Q. This $19,742.25, the Pinchot settlement, is set down here on this chart as representing the easements judicially determined? A. The value of the easements judicially determined.

Q. Did you make any computation to arrive at the fee value represented by that amount on the chart? A. No, I did not. I did not make up this chart. That is not my calculation.

779 Q. I did not mean you made up the chart, but did you make any computation to arrive at what they called easements judicially determined? A. No.

Q. You have not any testimony to give as to the value of such easements rights in the Pinchot lease? A. No, because I understood it was not judicially arrived at.

Q. What? A. I understood that that was not judicially arrived at. The calculation was more or less agreed on by the parties, because the Judge died and never made any judicial determination.

780 Q. Did you make any determination, separating fee from past damages under that Pinchot lease? A. I did not.

Q. Then you cannot state what was one or the other, can you? A. No.

Q. Did you determine the average date of the acquisition of the rights claimed by the Railroad? A. No, I did not.

Q. Did your computation include the fifty feet width of the old Depew Place on 42nd Street? A. At what time?

Q. In 1878. A. 1878? I do not think I included any figures for 1878. You refer to 1898?

Q. 1898? A. No, it was not included in any of these appraisals that were judicial determinations. It was not included.

Q. Depew Place was not included in any judicial determination, but you applied this front footage, arrived at by averaging the amounts that were determined, to the fifty feet of Depew Place, as well as the other property? A. You mean when I made my calculation? I said there were so many front feet in the parcel affected.

Q. Yes? A. Yes, I included Depew Place in that. 782

Q. And that was the computation or value as of 1898? A. Well, at the time of the prescription, yes. I think that was 1898.

*Redirect examination by Mr. Nichols:*

Q. Counsel has referred to your appraisal of the value of the easements based on judicial determinations as a mere calculation. I ask you was the method upon which you calculated the value of the easements based on the judicial determination adopted and applied, in the light of your expert knowledge? 783

Mr. Lehman: This question is not proper.

The Court: I will allow it.

Mr. Lehman: Exception.

A. Based upon my expert knowledge, yes, knowledge as a real estate expert.

Q. Have you checked up this method by your independent valuations? A. Oh, yes. When I was first asked about this thing I was shown the Court's order and I made a calculation of the value of the easements, just as I would have made it as a real estate man.

784 *Claimants' Witness—Robert Huntley—Redirect*

Q. How did you check up with the valuations of 1923?

Mr. Lehman: Objected to as incompetent. He has testified as an expert on averaging. Now he is changing that.

(Objection overruled; exception.)

Q. You used precisely the same method that you used here? A. Not precisely, though in the main, in principle, it was just the same. I took the testimony of the valuations of the experts as
785 to the properties on which there had been judicial determinations of the value of easements. Then I took the awards for the fee and I divided the amount of those awards by the average fee value, as testified to before the Courts by them, and I obtained the percentage of the fee value which the award represented. That is, I applied that to my valuation of the fee, the land only, as of 1923, and I did that in the first zone, and I did that in the second zone, and I arrived at a valuation of these easements which was practically the same as I testified to, in 1923.

786 Mr. Lehman: Now, if your Honor please, I object to that and move to strike out the answer.

The Court: Motion denied.

Mr. Lehman: May I state the reason?

The Court: Yes.

Mr. Lehman: This witness is now testifying that he took hearsay evidence and based a valuation on it as of 1923. That is the very thing that has been held was not proper evidence in this condemnation proceeding. The Court said you must value it as of the date of acquisition by the Railroad. His conclusion now is based upon a calculation as of value as of 1923. It is improper evidence.

Mr. Nichols: I am going to bring out the fact that his method of calculation, based on judicial proceedings, accords with his independent valuation made in 1923. It is a matter of record and the exact amount can be obtained on cross examination and the totals checked up, to show it is exactly the same method as adopted here of determining the values as of the time of acquisition.

Mr. Lehman: We know all the study that he made of the subject, upon which he bases his conclusions, but this purports to be evidence of a fact, 788
of value in 1923, which I say is utterly incompetent now, immaterial and irrelevant, and prejudicial to the rights of the City. I therefore move to strike out the testimony.

(Motion denied, exception.)

Q. What was the value that you arrived at by using the judicial determinations as a basis of calculation?

Mr. Lehman: Objected to. I must preserve my objection, on the ground that it refers to 1923, and on that ground I wish to object again.

(Objection overruled; exception.)

A. $3,669,000. 789

Q. That was the same method that you adopted to arrive at your valuation as of the earlier date, the time of the acquisition? A. My testimony in the preceding record was not exactly on that line. It is a matter of record, and you will see that I valued parcels before and after 1923, but I knew in 1923 of these proceedings and I had made a check-up, some calculations on them as to percentages, but in this case, when I was asked or shown the Court's order and asked to make an appraisal on the basis of the judicial determinations at that time, I had to proceed in a little dif-

ferent manner. I had to find what there was in those judicial determinations, to give me as a real estate expert a basis on which to calculate. Now, in those cases, in making appraisals, the experts have had before them certain information. That information is contained in the testimony of the experts, and upon it they say the value of the property was so much, and with that information before it the Court made its decision of the value of the easements, plainly stated. Therefore, I took
791 the same material and averaged the values of the fees here, as testified to before those Courts, and found it was so much, the award for the fee easements was so much, and, therefore, taking certain percentages, I applied that to my valuations of the land as of 1923 and obtained this result.

Mr. Lehman: In view of the witness's statement as to the difference between his method on that occasion and this occasion, I move to strike out his testimony, in arriving at the figures $3,669,000.

(Motion denied; exception.)

792 Mr. Nichols: I think that is all. Now, in order that we should reduce the possibility of contention to a minimum, I have accepted the theory of the City as to the scrap value of the railroad structure. It was testified in the former trial that the City sold the structure for $235. I accept that testimony as given on this trial. I do not want any clash about that.

Mr. Lehman: I understand that you accept the evidence in the record that the scrap value is $235?

Mr. Nichols: Yes. Understand me, I have no intention of imputing to the City any abandonment of their idea that we should get nothing at

all, but it has been suggested that we accept that value of $235.

Mr. Lehman: I did not suggest anything and I do not want to be on record as having suggested anything.

The Court: Why worry about it?

Mr. Nichols: I am willing to concede it.

Mr. Lehman: That is the truth, and I do not want to appear on the record as making proof for him.

Mr. Nichols: Have you anything else to offer? 794

Mr. Lehman: I have no other witness, but as evidence in rebuttal, for the aid of the Court in arriving at a conclusion, I desire to refer to the affidavit of Mr. Swords, in support of the original application to condemn, which is already in evidence, to the effect that from 1885 to 1906, the elevated railroad had direct contact with the Grand Central Station. This is only for the purpose of aiding the Court in arriving at the amount that may be or should be or might be properly awarded on account of the Grand Central Station. During all that period there was a direct physical contact 795 between the Grand Central Depot and the elevated structure for the accommodation of passengers. I would like to offer in evidence also the original copy of the contract or lease between the Railroad Company and the Elevated Railroad Company, which they have kindly furnished, and I would like to substitute a copy in place of the original.

Mr. Nichols: While I do not want to interpose any objection which may limit the evidence in any way, I must urge an objection in the record here as to it being relevant or material.

The Court: I will receive it.

Mr. Nichols: The engineer testified in full about this connection with the New York Central.

Mr. Lehman: It is only on the amount that might be allowed or disallowed.

(It is marked City's Exhibit 20-X.)

Mr. Lehman: Do you concede that the City of New York in 1885 acquired from private ownership title to 50 feet of the Grand Central Depot frontage, in trust as a public street, which 50 feet
797 constituted Depew Place from 1885 to 1905 when it went back into private ownership in which latter condition the title remained until the City took title to the spur in the proceeding in 1923?

Mr. Nichols: Yes.

Mr. Lehman: The City rests. I have no further evidence, but I should just like to make one observation before I go. I am particularly anxious to impress on your Honor the unsubstantial method, the improper method of valuation that has been given. The Appellate Division itself says that these rights interfering with the easements of light, air and access, should be valued
798 upon the basis of those former judicial determinations. There is not a word in any of those cases, or a suggestion or hint, that any value was based upon anything except the consequential damage to the abutting property, so that the Court must have meant when it said upon the basis not the amount that had been adjudicated because if it had meant the amount the Court would have said so, the amount of its judgment, and it would not have said upon the basis, because the basis means, I think, of the adjudication, so that the only proper way, it sems to me, for them to recover anything of value outside of what the rights actually cost

them, would be to find out just as they did in those old cases, what amount was the abutting property lessened in 1898—I will not say 1898 either—I say the proof shows by what method the amount was —each parcel of property—lessened at the time that it was acquired, and this method of averaging upsets everything, so that you cannot tell what the value of any one piece right there was because they have jumbled them together and made averages. The amounts of these separate judgments fixed the value of nothing but the particular lot that was in controversy in that action. 800 To show you the futility of the kind of method, we will take the premises 148-154, when the railroad right was acquired in 1888. That was a condemnation proceeding. How can they apply the value judicially determined in 1888 as to one lot to the value of other easement rights acquired years afterwards? What bearing does the judicial determination in the first case have in the slightest degree upon valuations in the other cases?

Mr. Nichols: Why not ask the witness? He is still on the stand.

Mr. Lehman: We rested our case. 801

The Court: I will let you inquire about it.

Mr. Nichols: We want to get at this at every possible angle.

Mr. Lehman: Mr. Huntley said he did not do anything except averaging these things, and I am arguing that averaging is no good. In the second place, to show the futility of the method and the impropriety of it, we will take, for example, the Manhattan Storage Warehouse. The average value fixed by this chart introduced in evidence is $568, applied to 125 feet frontage, for which the

Railroad paid $6,500. Applying that average, deduced from these other cases, in which the warehouse property was not in the slightest degree involved, we have $71,000. How can such a value be accorded to a piece of property years after the transaction, upon the basis of other cases that do not have anything to do with it? I just merely point it out as showing the practical futility or legal futility of any such method of computing values. Now, I will not attempt to take up your
803 Honor's time any further, but will reserve such views as I have to express for my memorandum, unless your Honor cares to hear me further?

The Court: It is not necessary. You do not intend to offer any proof at all?

Mr. Lehman: No.

Mr. Page: It is understood that on behalf of property owners heretofore stated we adopt all the objections and exceptions of Mr. Lehman, and the attitude he takes, or has taken.

The Court: That is understood.

(Case closed.)

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Supreme Court, New York County, Special Term, Part VI.

[Same Title]

Before: Hon. Phoenix Ingraham, J.

New York, April 5, 1932.

Hearing on objections.

Appearances:- Hon. Arthur J. W. Hilly, Cor-

poration counsel, attorney for the City of New York, by John Lehman, Esq., of Counsel; James L. Quackenbush, Esq., attorney for the Interborough Rapid Transit Co., by J. Osgood Nichols, Esq., of Counsel; William Roberts, Esq., attorney for the Manhattan Railway Co., by S. R. Ballin, Esq., of Counsel; George Welwood Murray, Esq., attorney for the Chase National Bank of the City of New York, successor by merger and consolidation to the Equitable Trust Company of New York, as Trustee under the second mortgage 806
of Manhattan Railway Co., by S. R. Ballin, Esq., of Counsel; Messrs. Davies, Auerbach & Cornell, attorneys for the Central Hanover Bank and Trust Company, successor to the Central Union Trust Company of New York, as Trustee, etc., by Mr. Morgan, of Counsel; Messrs. Shearman & Sterling, attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation, by Herbert Jeffers, Esq., of Counsel, and Messrs. Page and Page, attorneys for the Bowman Biltmore Hotels Corporation 807
(Hotel Commodore and Hotel Biltmore), *et al.*, by William H. Page, Esq., and John D. Dalton, Esq., of Counsel.

(Hearing, pursuant to notice, for the purpose of fixing a day for the hearing of objections as to awards and as to assessments in the above entitled matter.)

Mr. Lehman: The supplemental and amended tentative decree as to awards for damage and assessments for benefit was filed in the office of the Clerk of the County of New York for the time required by law and notice of such filing and to file objections thereto on or before the day specified

in said notice was published as by law required and that within the statutory time the following objections were filed and received:

Objections of Central Hanover Bank and Trust Company (successor to Central Trust Company of New York), as Trustees, etc., by Messrs. Davies, Auerbach & Cornell.

Objections of The Chase National Bank of the City of New York, successor by merger and consolidation to the Equitable Trust Company of
809 New York, as Trustee, etc., by George Welwood Murray, Esq.

Objections of Interborough Rapid Transit Company, by James L. Quackenbush, Esq.

Objections of Manhattan Railway Company, by William Roberts, Esq.

Objections of Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore); Bates-Bowman Corporation (Murray Hill Hotel); One Twenty Park Avenue Realty Corporation; Corn Exchange Bank; The Bowery Savings Bank; Lincoln Forty Second Street Corporation; Car-
810 bide & Carbon Realty Co., Inc.; Vanderbilt Avenue Building Corporation; D. A. Schulte, Inc.; John Curry Real Estate, Inc.; J. Chr. G. Hupfel Co., Inc.; Rogers Peet Company; Princeton Club of New York; News Syndicate Co., Inc.; F. & S. Rockaway Restaurant, Inc.; Tishman Realty and Construction Co., Inc.; The Oceanic Investing Corporation; Borden Realty Corporation; R-W Realty Company, Inc.; Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, Deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Anahma Realty Corporation and William Volk, by Messrs. Page and Page.

Objections of 145 East 41st Street Corporation, by Messrs. Shearman & Sterling.

Objections of Robert Walton Goelet, by Messrs. Shearman & Sterling.

Objections of The National City Bank of New York and National City Realty Corporation, by Messrs. Shearman & Sterling.

Objections of Cooper Union for the Advancement of Science and Art, by Messrs. Parsons, Closson & McIlvaine.

Objections of The Manhattan Storage & Warehouse Company, by Messrs. Middlebrook & Sincerbeaux. 812

Objections of Pershing Square Building Corporation, by Edmund W. Van Voorhis, Esq.

Objections of Alice M. McDonnell and John J. O'Brien, by Frank B. York, Esq.

Objections of Semena Holding Corporation, Josephine P. Hendricks, The American Encaustic Tiling Co., The Central Hanover Bank and Trust Co., The Palba Realty Corporation, H. A. Pomeroy, The Spies Estate, and The Onabla Realty and Holding Corporation, by Messrs. Deering and Deering. 813

Objections of The City of New York.

The above objectors appeared by their respective attorneys and stated to the Court that they rested on their filed objections to the supplemental and amended tentative decree as to awards and assessments.

814 *City's Exhibits*

**City's Exhibit 1-X, Dec. 8, 1930—Chap. 788, Laws of 1917.**
**City's Exhibit 2-X, Dec. 8, 1930—Chap. 611, Laws of 1919.**
**City's Exhibit 3-X, Dec. 8, 1930—Chap. 635, Laws of 1923.**

New York Supreme Court, First Judicial District, County of New York.

815 [Same Title]

In lieu of printing Chapter 788 of the Laws of 1917 (City's Exhibit 1-X of December 8, 1930), Chapter 611 of the Laws of 1919 (City's Exhibit 2-X of December 8, 1930) and Chapter 635 of the Laws of 1923 (City's Exhibit 3-X of December 8, 1930), it is hereby stipulated and agreed by and between the parties herein and hereto for the purpose of these appeals that the above Acts of the Legislature of the State of New York are considered a part of the record on appeal herein and that each party herein and hereto may refer
816 to and use the above Acts of the Legislature of the State of New York in their respective Points or Briefs to be filed in the Appellate Division of the Supreme Court, First Judicial Department, and on the argument of the appeals herein in the said Appellate Division with the same force and effect as if such Acts of the Legislature of the State of New York were physically printed in the record on appeal herein.

It is further stipulated and agreed by and between the parties herein and hereto that in case of an appeal by any party herein and hereto to the Court of Appeals from the order or orders of

the Appellate Division of the Supreme Court, First Judicial Department, to be made and entered herein on these appeals the above Acts of the Legislature of the State of New York are to be considered a part of the record on appeal to be used in the Court of Appeals and each party herein and hereto may refer to and use the above Acts of the Legislature of the State of New York in their respective Points or Briefs to be filed in the Court of Appeals and on the argument in that Court with the same force and effect as if such Acts of the Legislature of the State of New York 818 were physically printed in the record on appeal to be used in the Court of Appeals.

Dated, New York, June 27, 1932.

James L. Quackenbush, Attorney for Interborough Rapid Transit Company.

William Roberts, Attorney for Manhattan Railway Company.

George Welwood Murray, Attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The 819 Equitable Trust Company of New York, as Trustee, etc.

Davies, Auerbach & Cornell, Attorneys for Central Hanover Bank and Trust Company (formerly Central Union Trust Company of New York), as Trustee, etc.

Page and Page, Attorneys for Bowman-Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), *et al.*

Middlebrook & Sincerbeaux, Attorneys for The Manhattan Storage & Warehouse Company.

820

Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation.

Shearman & Sterling, Attorneys for Robert Walton Goelet, *et al.*

Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art.

Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York.

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**City's Exhibit 4-X, Dec. 8, 1930—Resolution of Board of Estimate and Apportionment duly adopted Dec. 5, 1919, authorizing President of Borough of Manhattan to negotiate with Manhattan Railway Co. for removal of tracks, structures, etc., constituting 42nd St. Spur.**

822

(This Exhibit is printed at page 1087 [City's Exhibit 9] of Volume II of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 5-X, Dec. 8, 1930—Minutes of Board of Estimate and Apportionment of meeting held on Nov. 26, 1920 (pages 6350 to 6352, inc.), particularly referring**

823

**to letter of President of Borough of Manhattan showing that an agreement between Railroad and City could not be reached.**

(This Exhibit is printed at pages 1088 to 1094 [City's Exhibit 10] of Volume II of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record).

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**City's Exhibit 6-X, Dec. 8, 1930—Resolution of Board of Estimate and Apportionment duly adopted January 14, 1921, requesting Public Service Commission, 1st Dist., to institute proceedings, etc., pursuant to Chap. 788, Laws of 1917, as amended by Chap. 611, Laws of 1919.**

825

(This Exhibit is printed at pages 1094 to 1096 [City's Exhibit 11] of Volume II of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

826 *City's Exhibits*

**City Exhibit 7-X, Dec. 8, 1930—Order and Determination of Public Service Commission, 1st Dist., dated Apr. 22, 1921.**

(This Exhibit is printed at pages 1096 to 1102 [City's Exhibit 12] of Volume II of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this
827 record.)

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**City's Exhibit 8-X, Dec. 8, 1930—Resolution of Board of Estimate and Apportionment duly adopted Sept. 30, 1921, directing institution of proceeding.**

(This Exhibit is printed at pages 81 to 83 of Volume I, and at page 1109 of Volume II [City's Exhibit 14] of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from
828 Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 9-X, Dec. 8, 1930—Notice of Application of City of New York for Order to Condemn.**

(This Exhibit is printed at pages 94 to 98 of Volume I and at page 1109 of Volume II [City's Exhibit 16] of Claimants' Exhibit "A-X" of De-

cember 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 9-X, Dec. 8, 1930—Petition of City of New York, verified July 13, 1923, for Order to Condemn.**

(This Exhibit is printed at pages 99 to 125 of Volume I and at page 1109 of Volume II [City's Exhibit 16] of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.) 830

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**City's Exhibit 9-X, Dec. 8, 1930—Affidavits of Publication and of Posting Notice of Application of City for Order to Condemn.** 831

(This Exhibit is printed at pages 123 to 125 of Volume I and at page 1119 of Volume II [City's Exhibit 16] of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

832

**City's Exhibit 9-X, Dec. 8, 1930—Affidavit of J. Osgood Nichols, verified July 17, 1923, submitted in Opposition to Application and petition of City for Order to Condemn.**

(This Exhibit is printed at pages 1110 to 1116 [City's Exhibit 16] of Volume II of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 9-X, Dec. 8, 1930—Reply Affidavit of Albert T. Swords, verified July 17, 1923, submitted in support of City's application and petition for Order to Condemn.**

(This Exhibit is printed at pages 1117 to 1119 [City's Exhibit 16] of Volume II of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 9-X, Dec. 8, 1930—Order of Special Term made by Bijur, J., dated and entered July 18, 1923, granting City's application to Condemn.**

(This Exhibit is printed at pages 125 to 127 of Volume I and at page 1119 of Volume II [City's Exhibit 16] of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 10-X, Dec. 8, 1930—Orders of Appellate Division dated and entered March 14, 1924, unanimously affirming Order of Special Term made herein by Bijur, J., dated and entered July 18, 1923 (City's Exhibit 9-X).**

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New York Supreme Court, First Judicial District, County of New York.

[Same Title]

In lieu of printing the two orders of the Appellate Division of the Supreme Court, First Judicial Department, made herein, both dated and entered March 14, 1924, it is hereby stipulated and agreed by and between the parties herein and hereto for the purpose of these appeals, as follows:

First.—That the appeal of Interborough Rapid Transit Company to the Appellate Division of the Supreme Court, First Judicial Department, from

the order of Special Term made herein by Bijur, J., dated July 18, 1923 and entered and filed in the office of the Clerk of the County of New York on the same day was unanimously affirmed by an order of the said Appellate Division, dated March 14, 1924, and entered and filed in the office of the Clerk of the Appellate Division on the same day, a certified copy of which order was entered and filed in the office of the Clerk of the County of New York on March 19, 1924.

839 Second.—That the appeal of Manhattan Railway Company to the Appellate Division of the Supreme Court, First Judicial Department, from the order of Special Term made herein by Bijur, J., dated July 18, 1923, and entered and filed in the office of the Clerk of the County of New York on the same day was unanimously affirmed by an order of the said Appellate Division, dated March 14, 1924, and entered and filed in the office of the Clerk of the Appellate Division on the same day, a certified copy of which order was entered and filed in the office of the Clerk of the
840 County of New York on March 19, 1924.

Dated, New York, June 27, 1932.

Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company.

William Roberts, Attorney for Manhattan Railway Company.

George Welwood Murray, Attorney for The Chase National Bank of the City of New York.

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successor by merger and consolidation to The Equitable Trust Company of New York.

Davies, Auerbach & Cornell, Attorneys for Central Hanover Bank and Trust Company, successor to Central Union Trust Company of New York.

Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation.

Shearman & Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation.

842

Middlebrook & Sincerbeaux, Attorneys for Manhattan Storage & Warehouse Company.

Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art.

Page and Page, Attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), *et al.*

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843

**City's Exhibit 11-X, Dec. 8, 1930—Resolution of Board of Estimate and Apportionment duly adopted Nov. 23, 1923, vesting title herein.**

(This Exhibit is printed at pages 89 to 94 of Volume I of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

844 *City's Exhibits*

**City's Exhibit 12-X, Dec. 8, 1930—Claim of Manhattan Railway Co.**

(This Exhibit is printed at pages 129 to 131 of Volume I and at page 1119 of Volume II [City's Exhibit 17 for Identification] of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 13-X, Dec. 8, 1930—Claim of Interborough Rapid Transit Co.**

(This Exhibit is printed at pages 131 to 134 of Volume I and at page 1120 of Volume II [City's Exhibit 18 for Identification] of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 14-X, Dec. 8, 1930—Claim of Central Union Trust Co. of N. Y.**

(This Exhibit is printed at pages 138 to 141 of Volume I of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

**City's Exhibit 15-X, Dec. 8, 1930—Claim of The Equitable Trust Co. of N. Y.**

(This Exhibit is printed at pages 134 to 137 of Volume I of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes," received and marked in evidence at page 202 of this record.)

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**City's Exhibit 16-X, Dec. 8, 1930—Draft Damage Map filed in N. Y. Co. Clerk's Office July 19, 1923.**

(This map is the same as the final Damage Map herein printed at page 1888 of Volume IV of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County in four volumes" received and marked in evidence at page 202 of this record.)

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**City's Exhibit 17-X, Dec. 8, 1830—Opinion of Appellate Division Rendered Herein (229 App. Div. 617)**

Supreme Court, Appellate Division—First Department.

March, 1930.

Victor J. Dowling, P. J.
Edgar S. K. Merrell,

850 *City's Exhibits*

Edward R. Finch,
Francis Martin,
Henry L. Sherman, JJ.
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In the Matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in
851 East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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Cross-appeals by The City of New York; by the
852 Manhattan Railway Company, as owner and lessor of the property taken; by the Interborough Rapid Transit Company, as lessee; by the Equitable Trust Company, as Trustee for second mortgage bondholders; and by certain owners of properties assessed, from the final decree of the Supreme Court, New York County, awarding compensation for part of an elevated railroad taken in condemnation by the City of New York.

J. Osgood Nichols, of counsel for the appellant, Interborough Rapid Transit Company.

William Roberts, of counsel for appellant-respondent, Manhattan Railway Company.

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L. Howell LaMotte, of counsel for appellant-respondent, The City of New York.

William H. Page, of counsel for appellants-respondents, Bowman Biltmore Hotels Corporation, Bowery Savings Bank, Corn Exchange Bank and 30 other property owners assessed.

Albert S. Wright, of counsel for appellant-respondent, Cooper Union for the Advancement of Science and Art.

H. C. McCollom, of counsel for respondent, Central Union Trust Company of New York, as Trustee, etc.

854

Charles A. Collin, of counsel for appellants-respondents, Bowman Biltmore Hotels Corporation, *et al.*, in answer to claimants' main briefs.

Harry T. Zucker, of counsel for appellant-respondent, Seward W. Ehrich, Inc.

Frederick L. Wheeler, of counsel for the New York Central Railroad Company, New York and Harlem Railroad Company and New York State Realty and Terminal Company.

Philip A. Carroll, of counsel for appellants-respondents, Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and National City Realty Corporation.

855

Thomas H. Baskerville, of counsel for appellant-respondent, the Manhattan Storage & Warehouse Company.

Herbert H. Maass, of counsel for appellant-respondent, Pershing Square Building Corporation.

George Welwood Murray, of counsel for appellant-respondent, The Equitable Trust Company of New York, as Trustee, etc.

Finch, J.: There is presented by this appeal a

856 *City's Exhibits*

novel and interesting question in the law of condemnation.

From the final decree entered at an Extraordinary Special Term awarding the sum of $975,438 with interest in a condemnation proceeding instituted by the City of New York to acquire the so-called private and public street easements, railwayway structure and franchise, constituting the elevated railroad spur in East 42nd Street, City of New York, the following parties appeal: The
857 City of New York, Manhattan Railway Company (as owner and lessor of the property taken), Interborough Rapid Transit Company (as lessee), Equitable Trust Company (as trustee for second mortgage bondholders), certain property owners assessed for benefit, all of whom object to the amount of the awards made for the franchise, the elevated structure and the so-called easements of light, air and access. In addition, Cooper Union objects that the assessments for benefit have been improperly distributed among the properties lying within the zone and are not laid in proportion to
858 the amount of benefit received. A single award was made to the Manhattan Railway Company, which is to be apportioned among the claimants according to agreement.

The controversy involves four items: (1) The value of the franchise obtained from the city and the state to build, maintain and operate the spur. For this the trial Court allowed $25,000. (2) The value of the elevated structure within the condemned area, including stations, platforms and staircase; allowed $120,438. (3) The cost of the necessary reconstruction and alteration of the sta-

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tion at East 42nd Street and Third Avenue caused by the removal of the spur; allowed $80,000. (4) The value of the so-called right to impair light, air and access appurtenant to the property abutting upon East 42nd Street; allowed $750,000. The principal of the award is thus $975,438, to which must be added the interest from the date of vesting of title, namely, December 7, 1923.

The aforesaid spur extended from the 42nd Street station of the Third Avenue Elevated Railroad at Third Avenue westerly approximately 900 feet through 42nd Street to a terminal at Park Avenue opposite the Grand Central Station. It was built in 1878 under perpetual franchises granted to the Manhattan Railway Company and its predecessor, the New York Elevated Railway Company (Mayor, etc. of New York *v.* Manhattan Ry. Co., 143 N. Y. 1), pursuant to Chapter 606 of the Laws of 1875, to provide through operation to the Grand Central Station. Owing to a serious accident a few months after its opening, the spur was changed to a shuttle service. This consisted of two trains having one or two cars each. These trains were operated simultaneously, one leaving the station where it had taken on passengers before the other could put into the same station. Without any additional charge, passengers were transferred to and from the spur. Except for certain alterations made in the stairway and station at Park Avenue, occasioned for the most part by changes in the Grand Central Terminal, the spur at the time title vested was approximately the same as when the shuttle service was installed. In 1903 the spur was leased, along with all the elevated railroads in the Boroughs of Manhattan

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and Bronx, by the Manhattan Railway Company to the Interborough Rapid Transit Company for a period of 999 years. The City owns the fee to the land in East 42nd Street in trust for street purposes. Upon this record it is fair to say that the cost of the operation of the spur exceeded by many thousands of dollars yearly the revenue therefrom, and that the taking by the City of the spur was a benefit to the claimants. In this connection, but without in any way deducing therefrom anything of evidentiary value, it is interesting to note the fact that the Brooklyn Elevated Railroads, in seeking to eliminate operation where service produced a loss, voluntarily ceased certain elevated railroad operation and took down the structures. In the case at bar the Legislature first accorded to the Railway an opportunity to do likewise without prejudice to its franchise rights. By Chapter 788 of the Laws of 1917 the Legislature empowered the Public Service Commission with the approval of the Board of Estimate and Apportionment to authorize the Manhattan Railway Company to remove this spur without prejudice to its franchise or its obligation to restore the railroad in the event such restoration should be deemed necessary or convenient for the public service. The Railway Company was, however, unwilling to remove the spur. The Legislature then enacted Chapter 611 of the Laws of 1919, amending Chapter 788 of the Laws of 1917 by adding thereto Section 1-a, so as to provide that in the event that on or before the 1st day of October, 1919, no agreement could be reached with the Manhattan Railway Company as to the removal of said spur, the Public Service Commission upon request of the Board of Estimate and Apportion-

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ment should conduct a hearing to determine whether said spur was necessary and convenient to the public service or constituted an impediment to the public use of the street. 865

Upon the giving of a certificate by the Public Service Commission that the spur was no longer necessary or convenient to the public service, or was an impediment or obstruction to the public use of the street, the City was given the right to condemn and remove the same. Said act then further provided as follows: "Whenever the said board of estimate and apportionment determine it to be necessary or advisable to remove from the street such tracks, structure, station and appurtenances or such unit or portion thereof as shall have been determined by said commission, the said City shall also condemn the rights, easements and franchises of the said Manhattan Railway Company to construct, maintain, operate or use said tracks, &c." It was then further provided that the costs, compensation and damages, for the payment of which the City shall become liable by reason of such condemnation proceeding, shall be paid and obtained in accordance with the provisions of Title 4 of Chapter 17 of the Greater New York Charter relative to the condemnation of real property for streets, parks, etc. The Act of 1917 was further amended by Chapter 635 of the Laws of 1923. Title 4 of Chapter 17 of the Greater New York Charter [Laws of 1901, Chap. 466, added by Laws of 1915, Chap. 606 as amd.] provides for the assessment of the cost of acquisition upon the real property benefited by the improvement. 866 867

Considering now the various items of the award, and taking up first the item of $80,000

found at Special Term as the cost of the necessary reconstruction and alteration of the station at East 42nd Street and Third Avenue caused by the removal of the spur, the City of New York expressly waives objection to this item as found and upon this record we affirm the finding.

As to the value of the franchise to build, maintain and operate the spur which the railroad company obtained from the City and the State, we agree with the trial Court that for the purposes of
869 valuation the franchise and the right of occupation of the street are so inseparably connected that they must be considered as a single entity. (People *ex rel.* Metropolitan Street Railway Company *v.* Tax Commissioners, 174 N. Y. 417, at page 441.) The rights of the railroad in the street were strictly limited by the franchise which it had acquired from the City and the State. Since the record shows that this spur could not longer be operated except at a large annual loss and that the taking by the City was a distinct benefit to the claimants, and the Public Service Commis-
870 sion, after proceedings and hearings, having determined and ordered that the spur was no longer necessary and convenient for the public service, it therefore follows that the right to run an elevated railroad in this street under these conditions was of no value.

Under the same conditions we are unable to ascribe to the elevated structure value other than what it would be worth taken down.

We come now to what is termed in its brief by the Interborough Rapid Transit Company as "the chief component element both of original cost and present value," namely, the so-called private street easements. It is the value of these rights,

by whatever name they may be called, which presents the interesting question upon this appeal. A superficial impression would prompt the query why, if the franchise is worth nothing and the elevated structure has only a scrap value, should these so-called easements acquired to be used in connection with the operation of the railroad, be worth any more? The railroad, on the other hand, urges that these rights must be paid for not upon their fair market value as between a willing buyer and a willing seller, which has always been the measure in condemnation (Matter of Simmons, 130 App. Div. 350, aff'd 195 N. Y. 573) but as measured by the benefit conferred upon the abutting property. This latter, however, has never been the principle applied in condemnation, and but slight consideration is sufficient to show that such a principle could not in fairness be applied. As Mr. Justice Holmes, in Boston Chamber of Commerce *v.* Boston (217 U. S. 189, at pp. 194-195), said: "The petitioners contended that they had a right, as matter of law under the Constitution, after the taking was complete and all rights were fixed, to obtain the connivance or concurrence of the dominant owner, and by means of that to enlarge a recovery that otherwise would be limited to a relatively small sum. * * * according to the contention, by a simple joinder of parties after the taking, the city could be made to pay for a loss of theoretical creation, suffered by no one in fact. The statement of the contention seems to us to be enough. It is true that the mere mode of occupation does not necessarily limit the right of an owner's recovery. (Boom Co. *v.* Patterson, 98 U. S. 403; Louisville & Nashville R. R. Co. *v.* Barber Asphalt Co., 197 U. S.

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430, 435.) But the Constitution does not require a disregard of the mode of ownership—of the state of the title. • • • It merely requires that an owner of property taken should be paid for what is taken from him. It deals with persons, not with tracts of land. And the question is what has the owner lost, not what has the taker gained." And as the same Justice said in City of New York *v.* Sage (239 U. S. 57, 61): "But what the owner is entitled to is the value of the
875 property taken, and that means what it fairly may be believed that a purchaser in fair market conditions would have given for it in fact—not what a tribunal at a later date may think a purchaser would have been wise to give, nor a proportion of the advance due to its union with other lots. The City is not to be made to pay for any part of what it has added to the land by thus uniting it with other lots, if that union would not have been practicable or have been attempted except by the intervention of eminent domain."

In considering the nature of these rights we
876 first note that the parties have treated them as arising upon conveyances. A fair digest of a sample combination release and grant is as follows:

"Witnesseth: • • • in consideration of the sum of Five thousand ($5,000) dollars, • • • the party of the first part hereby releases the parties of the last part and each of them, from all claims, damages, and cause or causes of action • • • and including all claims, damages and cause or causes of action for depreciation in the value of the said premises, and loss of rents, • • • and annoyance or injury to the owner or occupant, and

interference with the use of the said premises, or the easements appurtenant to the same, produced by the construction, maintenance or operation of the elevated railroad.

"And, the party of the first part, hereby grants and conveys to the parties of the last part, their successors and assigns, all the right, title and interest of the said party of the first part in said East 42nd Street, and the land forming the bed thereof, and the easements therein, appurtenant to said premises, which are or may be necesary 878 for the construction, maintenance and operation of an elevated railroad in said street, as the same is now constructed, maintained and operated, except as hereinafter stated; * * * and the party of the first part hereby authorizes and consents to * * * the operation of the said railroad through the said street and past the premises hereinbefore described, by the parties of the last part, their successors or assigns forever, without further compensation or further liability for any damages that may hereafter be sustained by the said premises or by the owner or occupant thereof, 879 or by any person in privity of estate with the party of the first part, caused by said * * * operation of said railroad as the same is now constructed, maintained and operated, except that the parties of the last part and their successors or assigns may at any time hereafter use, in the operation of their railroads, electricity or any other motive power, and may also make such repairs to or alterations in the present structure as they may deem expedient; provided, however, that in no case shall said structures, or the operation of trains thereon be changed * * * so as to

880 materially increase the encroachments upon the easements hereby released and conveyed or the existing burden upon the abutting property hereinabove described."

The railroad also acquired some of these rights by court action in cases instituted by the abutting owners for an injunction or, in the alternative, for money damages, and by condemnation and prescription. In the settlement of the injunction suits the railway company acquired only such rights as
881 would have been acquired by a condemnation proceeding. (American Bank Note Co. *v.* N. Y. El. R. Co., 129 N. Y. 252, at p. 270.) So, too, the rights acquired by the railway company by prescription were no greater than those acquired by condemnation (Hindley *v.* Manhattan R. Co., 185 N. Y. 335; American Bank Note Co *v.* N. Y. El. R. Co., 129 N. Y. 252, 270). It is to be noted, therefore, that the rights acquired by the railway company in all of these ways are identical. Also the instruments partook of a double nature. As relating to past damages, they were in the form of releases. As
882 relating to continuing trespass and future damages, they were in the form of full covenant warranty deeds. (People *ex rel.* Manhattan R. Co. *v.* Barker, 165 N. Y. 305, at p. 316).

These so-called easements have also been taxed as tangible property of the railroad. People *ex rel.* Manhattan R. Co. *v.* Barker, *supra;* People *ex rel.* Manhattan Ry. Co. *v.* Woodbury, 203 N. Y. 231.) In the case last cited it was said for the Court by Judge Gray: "I think that the cost of the easements was properly included in ascertaining the value of the relator's tangible property. The structures in the street upon the

acquisition of those easements became lawful as to the abutting property owners; they then became appurtenant to the railroad property and, necessarily, enhanced its value." Furthermore, they have been judicially valued as representing the amount which has been taken from the value of the abutting property after allowing for all the benefits received. (Newman *v.* Metropolitan El. Ry. Co., 118 N. Y. 618, 623.) These rights therefore had value and could not have been acquired by the railroad for less than their cost to it. If the courts should now determine that these rights should be taken from the railroad and added to the respective properties of the abutting owners without compensation, the courts would be unjustly enriching the property owner at the expense of the railroad. While it is true that this proceeding is one between the City and the railroad, yet as a part of this same statute it is provided that the cost of acquisition of the property taken shall be assessed upon the property benefited. We must view the plan as a whole and the results sought to be accomplished. When the City assesses the cost of the acquisition of these easements against the property benefited, the easements are forever extinguished, even if the language of this special condemnation statute does not itself cause an extinguishment. Its language is "and the extinguishment of all rights, easements and franchises herein." It would be unfair to the railroad to permit this value to be taken from it and added to the abutting property without compensation to the railroad.

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The foregoing brings out clearly the difficulty of fixing a value for these so-called easements in ac-

886 cordance with general principles and not as arbitrarily determined. We cannot close our eyes to the fact that this condemnation is a present benefit to the railroad because, as noted, the operation of this spur was unprofitable. As these so-called rights when acquired by the railroad were of no use to it, except as it was compelled to acquire them in order to operate pursuant to its franchise, it would naturally follow that such rights would expire with the cessation of the operation of the railroad. We must, however, bear in mind the 887 plan of condemnation as enacted in this special statute and the result accomplished thereby, and adopt a principle which shall do justice to all parties concerned. In the creation of these rights and all subsequent dealings therewith the courts have had in mind such a principle. As practically applied, it is to be noted that the courts proceeded on just this principle when they permitted these abutting owners to recover the damages which they suffered by reason of the erection and operation of this railroad.

888 Prior to the construction of the elevated railroads in the streets of the City of New York, the Court of Appeals had held that the owners of property abutting on public streets in the City had a right to have the street kept open in front of their property and this right was held to be private property. (People *v.* Kerr, 27 N. Y. 188; Fearing *v.* Irwin, 55 N. Y. 486; Egerer *v.* N. Y. C. & H. R. R. R. Co., 130 N. Y. 108; Coster *v.* The Mayor, etc., of Albany, 43 N. Y. 399.) In addition, prior to the erection of the elevated railway structures in the City, the Court of Appeals had also held that the operation of a street surface railroad in a public street, the fee to which was in the City for

street purposes, did not constitute a taking of the rights of abutting owners. (Kellinger *v.* Forty-second Street, etc., R. R. Co., 50 N. Y. 206; People *v.* Kerr, 27 N. Y. 188.) After the elevated structure had been erected in East 42nd Street, the Court of Appeals held that an owner of land abutting on the elevated railroad had easements of light, air and access in the street appurtenant to his lot which formed a part of his estate, and that the railroad in that street interfered with the free circulation of light and air and impaired his access to such an extent that it amounted to a taking of his property for a public use. (Story *v.* N. Y. El. R. Co., 90 N. Y. 122.) In this Story case the title to the bed of the street was in the abutting owners and the court allowed a recovery because the City of New York covenanted in the grant that the street upon which the property abutted should continue open forever. This case was followed by others where the same result was reached, even though the fee title to the streets for street purposes was in the City of New York. (Lahr *v.* Met. El. R. Co., 104 N. Y. 268; Kane *v.* N. Y. El. R. Co., 125 N. Y. 164.) Here likewise the court held that abutting owners had easements of light, air and access, and the erection and operation of the elevated railroads impaired these easements to such an extent as to amount to a taking of private property for a public use. 890 891

Looking at the matter broadly, the courts saw that the property owners abutting upon a street wherein ran an elevated railroad, bore more than their fair share of community burden as against adjoining streets in which there was no elevated.

Determining that such owners were justly entitled to damages, the courts then sought a theory upon which to sustain so just a result. Likewise, in valuing the so-called rights which were taken, the courts proceeded upon principles designed to produce just results. In most instances the abutting property owners received benefits from the operation of the elevated railroad, as well as damages for the impairment of their light, air and access. In accordance with familiar principles, where
893 property is taken in condemnation the fair market value is allowed to the owner for the property actually taken and benefit is not considered. Where, however, in condemnation not all the property of the owner is taken, in addition to allowing the fair market value of the property taken, the court allows consequential damage to the property still left in the hands of the condemnee. In estimating the amount of this consequential damage, benefit as well as detriment is taken into consideration. When the elevated structure was erected the stairways brought many people past
894 the show windows of abutting owners and, because of the more rapid transit, also brought in more customers from other portions of the city. These customers were not only store customers but also were customers for dwellings and all other purposes, so that the value of the land in the vicinity was enhanced. In each case the abutting owner had only a small portion of his property taken and a large amount left in his hands, for which he was entitled to consequential damages. To meet this situation and produce just results the courts proceeded upon the principle that the easements taken were of nominal value

and then proceeded to determine the amount of consequential damage to which the owner was entitled by awarding him such damage as the detriment exceeded the benefits. (Bohm *v.* M. E. R. Co., 129 N. Y. 576, 588; Sutro *v.* The Manhattan Railway Co., 137 N. Y. 592, 593; Bookman *v.* N. Y. E. R. R. Co., 137 N. Y. 302, 304; Livingston *v.* M. E. R. Co., 138 N. Y. 76, 78.) Likewise, when the subway has been constructed and an elevated railroad spur has thereby become more or less obsolete, the court must reach a just result in accordance 896
with legal principles, and not permit these rights to be taken from the railroad and added to the abutting property without compensation. Looking, therefore, at the result accomplished by the special statute pursuant to which this condemnation is had and the net result accomplished thereby, namely, that these rights acquired from the property owners are returned to them and extinguished (Matter of Mayer, 186 N. Y. 237, 244), we reach the conclusion that the railroad is entitled to compensation therefor. A contrary result would be unfair to the railroad because it would turn 897
over these rights of property acquired by the railroad on a basis of judicial determination and restore them to the property owners at the expense of the railroad and without payment therefor by the abutting owners.

Having in mind the foregoing, we must ascribe some value to these rights. Since they were acquired upon a basis judicially determined, there is no middle ground between ascribing no value to them and valuing them for what has been judicially determined to be the amount by which the abutting property was damaged for all time in

the future by the operation of the railroad. This should exclude any amount which the railroad at the time of acquisition paid for past damages, since the latter was then determined upon the basis only of making whole the abutting property owner for the damages suffered up to the time of trial. A different situation arises with reference to the so-called "fee damages" and it is only for the latter that the railroad is entitled to compensation herein. The distinction between these two
899 classes of damage was well pointed out by Judge Haight, in People *ex rel.* Manhattan Ry. Co. *v.* Barker (165 N. Y. 305, 316): "The operating of an elevated railroad in a street in front of abutting property without acquiring from the owners the right so to do is an interference with and a partial destruction of such owners' easements of light, air and access. The structure is, therefore to that extent unauthorized and illegal, and the company operating it is deemed to be a trespasser upon the right of such owners. *Hence, in an action brought to recover damages for such use, the*
900 *company becomes liable for all of the damages that it has caused by reason of its unlawful structure not only for its impairment of the owners' easements of light, air and access, but also for its interference with their privacy and their convenience. For the damages so recovered, no right or property of value is acquired by the railroad company. It is for others' property rights destroyed and for injuries inflicted upon others that the company is compelled to make compensation in damages. Such damages, consequently, do not form a basis upon which any valid assessment can be made. It is quite different, however, as to the*

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*damages ordinarily denominated 'fee damages.' Such damages are awarded for rights acquired from others for all time to come, or at least during the existence of the railroad company.* The rights acquired are the easements of light, air and access of the abutting property owners in the streets occupied by the elevated railroad structure, and when these easements are acquired by the company its structure becomes lawful and its right to operate its road in front of the abutting property unquestioned. (Messenger *v.* Manhattan R. Co., 129 N. Y. 502.) The acquirement of 902
these easements, it is true, destroys in a measure the value of the abutting property, but to the extent that such value is destroyed, that of the railroad company is increased. We think, therefore, that the *fee damages represent property that may be assessed.*" (Italics not in original.)

We find therefore that these rights should be valued at the time of taking at not less than upon the basis judicially determined as their value at the time of their acquisition.

The question then arises, should they be valued at a greater sum? Considering, as we must, that 903
they could only be used in connection with an elevated railroad or a kindred purpose, we are unable to find that these rights for such a purpose have increased in value over what they were worth when they were acquired. What the owner lost in value at the time of the taking has not since increased in value in the hands of the taker. If the attempt is made to value these rights as of greater worth in the hands of the railroad, it is only because either they would cost more to acquire today or they would benefit more, not the

City, the condemnor, but those upon whom the City is to assess the cost of their acquisition, namely, the property owners. Neither of these considerations increases their value in condemnation in the hands of the railroad. In the first place, no one today would acquire them for the purpose of running an elevated railroad. This because of the changed city conditions, including the advent of the subway. In the second place, this proceeding is between the City and the railroad. But if, as is fairer, we consider the statute
905 as a whole under which this proceeding is brought, and particularly that part which provides for the assessment of the cost upon the property benefited, even then the amount of the benefit is not material, since, in the language of Mr. Justice Holmes, "the question is what has the owner lost, not what has the taker gained." (Boston Chamber of Commerce *v.* Boston, *supra.*) The City should therefore pay for these rights upon the basis of what has been judicially determined to be their value at the time of their acquisition,
906 which, of course, excludes any amount then paid for past damage.

The railroad urges that it might have abandoned the spur and sold these rights to the property owners. But such a proposition is based upon fanciful assumptions, to sustain which there is no evidence in this record. Testimony is lacking to show that any or a sufficient number of property owners would or could purchase said rights. The argument presupposes a relinquishment of all other damages because it would be necessary to demolish the structure and rebuild the Third Avenue station in order to deliver a single so-called

easement. Market value cannot be predicated upon a single sale. In addition, it has already been judicially determined that such a consideration is a mere "hypothetical possibility." (McGovern *v.* City of New York, 229 U. S. 363; City of New York *v.* Sage, 239 U. S. 57.)

Taking up the objection of Cooper Union that the assessments for benefit have been improperly distributed upon the property lying within the assessment zone and are not laid in proportion to the amount of benefits received. Specifically 908
Cooper Union objects that the assessment against so much of the Grand Central Terminal property as lies in Zone A is not laid in like proportion according to benefit as the assessment against the property of this appellant, Cooper Union. The latter admits, however, "It is true that the courts have approved a lower rate of assessment against strictly railroad properties." It is claimed, however, that the Grand Central Terminal is, strictly speaking, not railroad property and, therefore, the court below was in error in applying this rule. The question of the amount of benefit received by 909
any parcel of real property is a question of fact to be considered upon the whole record, including a view of the property within the area of assessment. Having so viewed the property, the court has fixed the assessment for benefit and we find no reason upon this record to disturb this finding of fact. As was said by the court in Matter of City of New York (Juniper Avenue), 253 N. Y. 387, 392: "They (referring to the commissioners) may consider all the circumstances. A certain parcel may be held under such a restricted title as to enjoyment or alienation that a local improvement is of less advantage to it than to

another parcel of equal size owned in fee simple absolute. (Citing cases.)" Likewise, Cooper Union urges that the assessments against properties along 42nd Street in Zone A should be reapportioned so as to increase the rate of assessment at the easterly and westerly extremities of the zone and decrease the assessments against the properties in the central portion, upon the ground that the station was of wider construction at the two extremities and took more light, air and access and
911 was of greater detriment to the properties at the two extremities than it was to the properties in the central portion. This likewise was a question of fact for the court at Special Term, taking into consideration all the evidence, including a view of the premises. Moreover, the rule is thoroughly well settled that unless an erroneous theory is shown to have been adopted, the finding of the trial Court in apportioning assessments will not lightly be disturbed upon appeal. (Matter of City of New York [Clinton Avenue], 106 App. Div. 31; aff'd 185 N. Y. 601; Matter of City of New York
912 [West 184th Street], 165 App. Div. 356; aff'd 216 N. Y. 642). In the case at bar the record does not support the contention of the appellant Cooper Union that the rate of assessment against the property in the central part of Zone A should be decreased and that the rate of assessment against the property at the easterly and westerly extremities should be increased. The making of rates and the levying of assessments represent different functions. The first named is an exercise of the power of eminent domain and the other that of the taxing power. (Genet *v.* City of Brooklyn, 99 N. Y. 296; People *ex rel.* Griffin *v.* The Mayor, etc., of Brooklyn, 4 N. Y. 419.)

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We therefore affirm the determination of the court at Special Term as to the cost of the necessary reconstruction and alteration of the station at East 42nd Street and Third Avenue caused by the removal of the spur. To the franchise obtained from the City and State to build, maintain and operate the spur, we give no value. Nor do we allow any value to the elevated structure within the condemned area, including stations, platforms and staircase, except that which it would have when taken down. We value the rights to impair light, air and access appurtenant to the property abutting upon East 42nd Street at the time of the vesting of title herein upon the basis of the value judicially determined at the time of the original acquisition of these rights.

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The decree appealed from should be modified in accordance with this opinion and as so modified affirmed. The parties in all probability will be able to agree upon the amounts, but if not, a referee will be appointed.

All concur.

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**City's Exhibit 18-X, Dec. 8, 1930—Order of Appellate Division Made Herein, Dated May 9, 1930, and Entered June 3, 1930, Reversing, Etc., Final Decree**

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in the First Judicial Department, in the County of New York, on the 9th day of May, 1930.

916 *City's Exhibits*

Present:

Hon. Victor J. Dowling, Presiding Justice,
" Edgar S. K. Merrell,
" Edward R. Finch,
" Francis Martin,
" Henry L. Sherman,
Justices.

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917 In the Matter of the Application of The City of New York relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

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An appeal having been taken to this Court by the City of New York from each and every part of the Final Decree of the Supreme Court, New York County, made by Mr. Justice James O'Malley, dated February 28, 1928, and entered and filed in the office of the Clerk of the County of New York on March 14, 1928, in the above entitled matter, in so far as the same relates to and covers

and contains the awards of $975,438.00 principal and $247,273.53 interest made to the Manhattan Railway Company for Damage No. 1; an appeal having been taken to this Court by the Manhattan Railway Company, as owner and lessor, from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by the Interborough Rapid Transit Company, lessee, from each and every part of the aforesaid Final Decree wherein and whereby it is among other things adjudged that the amount of $1,222,711.53 be awarded to the Manhattan Railway Company as just compensation for damages sustained by it in this proceeding; an appeal having been taken to this Court by The Equitable Trust Company of New York, as trustee under a Deed of Trust of the Manhattan Railway Company, dated June 1, 1913, from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by Bowman Biltmore Hotels Corporation (Hotel Commodore), Corn Exchange Bank, Bowman Biltmore Hotels Corporation (Hotel Biltmore), B. L. M. Bates Corporation (Hotel Belmont), Bates-Bowman Corporation (Murray Hill Hotel), Guaranty Trust Company of New York, as substituted Trustee of the Est. of John Curry, deceased, J. Chr. G. Hupfel Co., Inc., The Bowery Savings Bank, Rogers Peet Company, Princeton Club of New York, Fritz G. Schmidt, Office Realty Corporation, William Volk, 202-204 East 42nd Street Corporation, Vanderbilt Avenue Building Corporation, Centerminal Corporation, F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc., Frederick Brown, James B. Ford, Anahma Realty

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Corporation, D. A. Schulte, Inc., The Oceanic Investing Company, Borden Realty Corporation, R-W Realty Company, Inc., Trustees of the Estate of James Kelley, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Alex. Taylor and Co., Inc., Henry Hof, 140 East 27th Street Corporation and Carbide and Carbon Realty Co., Inc., from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by The New York Central Railroad Company, The New York and Harlem Railroad Company, and the New York State Realty and Terminal Company, from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by the Pershing Square Building Corporation from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by the Cooper Union for the advancement of Science and Art from each and every part of the aforesaid Final Decree; an appeal having been taken to this Court by the Manhattan Storage and Warehouse Company from each and every part of the aforesaid Final Decree and an appeal having been taken to this Court by Seward W. Ehrich, Inc., from each and every part of the aforesaid Final Decree; and the said appeals having duly come on to be heard on the 11th day of March, 1930, and having been duly argued and submitted on that day by Arthur J. W. Hilly, Esq., Corporation Counsel, attorney for

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The City of New York, appellant-respondent, by L. Howell LaMotte, of Counsel, by William Roberts, Esq., attorney and of Counsel for the Manhattan Railway Company, appellant-respondent, by James L. Quackenbush, Esq., attorney for the Interborough Rapid Transit Company, appellant-respondent, by J. Osgood Nichols, Esq., of Counsel, by George Welwood Murray, Esq., attorney and of Counsel for The Equitable Trust Company of New York, as Trustee, etc., appellant-respondent, by Messrs. Page and Page, attorneys for the Bowman-Biltmore Hotels Corporation (Hotel Commodore), *et al.*, appellants-respondents, by William H. Page, Esq., and Charles A. Collin, Esq., of Counsel, by Alex. S. Lyman, Esq., attorney for The New York Central Railroad Company, *et al.*, appellants-respondents, by Frederick L. Wheeler, Esq., of Counsel, by Edmund W. Van Voorhis, Esq., attorney for the Pershing Square Building Corporation, appellant-respondent, by Herbert H. Maass, Esq., of Counsel, by Messrs. Shearman and Sterling, attorneys for Robert Walton Goelet, *et al.*, appellants-respondents, by Philip A. Carroll, Esq., of Counsel, by Messrs. Parsons, Closson & McIlvaine, attorneys for the Cooper Union for the Advancement of Science and Art, appellant-respondent, by Albert S. Wright, Esq., of Counsel, by Messrs. Middlebrook and Sincerbeaux, attorneys for the Manhattan Storage and Warehouse Company, appellant-respondent, by Thomas H. Baskerville, Esq., of Counsel, by Messrs. Hollander and Bernheimer, attorneys for Seward W. Ehrich, Inc., appellant-respondent, by Harry T. Zucker, Esq., of Counsel, and by Messrs. Davies, Auerbach and Cornell, at-

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torneys for the Central Union Trust Company of New York, as Trustee, respondent, by H. C. McCollom, Esq., of Counsel, and due deliberation having been had thereon; it is unanimously

Ordered, That the objections of Cooper Union for the Advancement of Science and Art that the assessments for benefit have been improperly distributed upon the property lying within the area of assessment in the proceeding, be and the same hereby are overruled; and it is further unanimously

Ordered, That the Final Decree of the Supreme Court appealed from be and the same hereby is in all respects reversed, vacated and set aside, except as to the sum of $80,000.00, which amount is the cost of the necessary reconstruction and alteration of the station at East 42nd Street and Third Avenue caused by the removal of the Spur in East 42nd Street and which item in the sum of $80,000.00 is included in the total award of $975,438.00 made to the Manhattan Railway Company for Damage No. 1; and it is further unanimously

Ordered, That the said Final Decree and the within proceeding be and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award for Damage No. 1 in the above entitled proceeding in accordance with the opinion of this Court and to make the assessment for benefit in the above entitled proceeding in accordance with law.

[Entered and filed in the office of the Clerk of

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the Appellate Division of the Supreme Court, First Judicial Department, on June 3, 1930, a certified copy of which order was entered and filed in the office of the Clerk of the County of New York on June 26, 1930.]

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**City's Exhibit 19-X, Dec. 8, 1930—Resolution of Board of Estimate and Apportionment Adopted June 29, 1923, Amending Resolution Adopted Sept. 30, 1921** 932

(This exhibit is printed at pages 84 to 89 of Volume 1 of Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in Four Volumes," received and marked in evidence at page 202 of the record.)

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**City's Exhibit 20-X, Dec. 9, 1930—Lease Between N. Y. C. & H. R. R. R. Co. and Manhattan Railway Co.** 933

Whereas, The Manhattan Elevated Railway Company hath by the consent of the New York Central and Hudson River Railroad Company erected a platform extending from the platform at the westerly end of the branch of the elevated railway in Forty-second Street to the southerly front of the new extension of the Grand Central Depot at Forty-second Street, as shown on the annexed diagram, and desire to keep and use the room designated on said diagram in said exten-

934 *City's Exhibits*

sion of the Grand Central Depot as a passenger station of its elevated railway having stairways to the ground floor of said extension and approaches from the street and connection for passengers with said elevated railway and with the said Grand Central Depot, all as shown on said diagram.

And whereas, The New York Central and Hudson River Railroad Company, having the right in that behalf, is willing to lease such room for such purposes.

935 Now therefore this agreement made between the New York Central and Hudson River Railroad Company, party of the first part, and the Manhattan Elevated Railway Company, party of the second part, witnesseth that for and in consideration of the sum of one dollar, paid by the party of the second part, the receipt of which is acknowledged, and in consideration of the mutual covenants hereinafter contained, the party of the first part hereby leases and lets to the party of the second part the room designated on said diagram (which is hereby made a part of this agreement)

936 in the extension of the Grand Central Depot, at Forty-second Street with the approaches, stairways, platform in front of and connections with the elevated railroad, with entrance and exit to and from the street for passengers of the party of the second part, all as shown on the annexed diagram, for the term of fifteen years from the day of the date hereof, at an annual rental of five hundred dollars, payable annually on the last day of each of the fifteen years of said term, to be used as a passenger station of its elevated railroad by the party of the second part with the wait-

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ing-room, ticket-office &c., but for no other purpose or purposes.

And the party of the first part hereby agrees to keep said room or station at all times heated sufficiently for the comfort of passengers, and agrees that the platform connections of the elevated railway, stairway connections for passengers with the Grand Central Depot, means of exit and entrance to and from the street shall be at all times during said fifteen years permitted and retained as shown on the annexed diagram, except such changes as shall be mutually agreed upon, and except that if 938
passenger baggage shall at any time be brought upon the elevated railway to said Grand Central Depot extension, the party of the first part reserves the right to make, construct and use an elevator or slide from said demised room to the baggage room below for the purpose of conveying baggage to and from said demised room to said baggage room, and agrees that said stairways entrance and exit to and from the street shall be at all times day and night open to the public and passengers of the party of the second part,

And agrees that the party of the second part 939
shall have, during the said term of fifteen years, exclusive control of said room, except as aforesaid, platform in front connections of the elevated railway, stairways, entrance and exit to and from the street for the purposes above set forth.

And the party of the second part agrees to place and maintain a passenger station of its elevated railway in said room during said fifteen years; to keep said room and stairways in a clean and neat condition, and at all times to maintain said stairways in good repair and condition; and to

pay to the party of the first part the annual rental hereinbefore specified; and to forthwith take down and remove the stairway now extending from the platform of said elevated railway at its westerly end to the sidewalk on the north side of Forty-second Street, and during said term of fifteen years to not renew or replace said stairway, and to have no other connection with said elevated railway on the northerly side of Forty-second Street than by the stairways, room and platform
941 hereby demised; and expressly that at no time during said term shall any tickets be sold on the demised premises other than the tickets of the party of the second part for conveyance on their elevated railways; and that no passenger or baggage express business or agency for the solicitation of the carriage of passengers or baggage shall be done or suffered upon any part of the demised premises; and that no newspapers, books or periodicals shall be sold or offered for sale on any part of the demised premises; and that at the expiration of the term hereby created, the party
942 of the second part will peacably and quietly surrender the premises hereby demised, and in as good condition as at the beginning of the term,—damages by the elements excepted.

In witness whereof, the parties of the first and second parts have caused this instrument to be subscribed with their names by their respective presidents or vice-presidents and the corporate seals of their respective companies to be hereto affixed this twenty-third day of December, 1885.

The words "to lease" inserted on first page, and the words "party of the" inserted in second page before signing.

The New York Central & Hudson River Railroad Company, by Chauncey M. Depew, Prest.

[Seal—New York Central & Hudson River Railroad Company.]

Manhattan Railway Company, by R. M. Gallaway, Vice-President.

[Seal of Manhattan Railway Company.]
Attest: D. W. McWilliams, Secretary.

**Claimants' Exhibit A-X, Dec. 8, 1930—Papers on Appeal from Final Decree of Supreme Court, N. Y. Co. (4 vols.)** 944

New York Supreme Court, Appellate Division, First Judicial Department.

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In the matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd St. Spur in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain, and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances. 945

946 *Claimants' Exhibits*

In lieu of printing in this record on appeal Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on appeal from Final Decree of Supreme Court, New York County, in four volumes" received and marked in evidence at page 202 of this record, it is hereby stipulated and agreed by and between the parties herein and hereto that the above Exhibit "A-X" is considered a part of the record on appeal herein with the same force and effect as if the said Exhibit
947 "A-X" were physically printed in the record on appeal herein and the required number of printed copies of the above Exhibit "A-X" is to be filed in the office of the Clerk of the Appellate Division of the Supreme Court, First Judicial Department, at the same time the record on appeal herein is filed in the office of the Clerk of the said Appellate Division.

It is further stipulated and agreed by and between the parties herein and hereto that in case of an appeal by any party herein and hereto to the Court of Appeals from the order or orders of
948 the Appellate Division of the Supreme Court, First Judicial Department, to be made and entered on these appeals the above Claimants' Exhibit "A-X" is to be considered a part of the record on appeal to be used in the Court of Appeals with the same force and effect as if the said Exhibit were physically printed in the record on appeal to be used in the Court of Appeals and the required number of printed copies of the above Exhibit "A-X" is to be filed in the office of the Clerk of the Court of Appeals at the same time the record on appeal is filed in the office of the Clerk of the Court of Appeals.

Dated, New York, June 27th, 1932.

949

William Roberts, Attorney for Manhattan Railway Co.

George Welwood Murray, Attorney for the Chase National Bank of the City of New York, Successor by merger and consolidation to The Equitable Trust Co. of New York, as Trustee under the second mortgage of Manhattan Railway Company.

950

Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York.

Davies, Auerbach and Cornell, Attorneys for Central Hanover Bank and Trust Company (successor to Central Union Trust Company).

James L. Quackenbush, Attorney for Interborough Rapid Transit Company.

951

Page and Page, Attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore), Bowery Savings Bank, William Volk, D. A. Schulte, Inc., *et al.*

Middlebrook and Sincerbeaux, Attorneys for Manhattan Storage & Warehouse Company.

Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation.

952

Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art.

Shearman & Sterling, Attorneys for Robert Walton Goelet, *et al.*

Approved in so far as the record is in this Court. E. R. F.

953

954

## Claimants' Exhibit B-X, Dec. 8, 1930—Chart Entitled Judicial Determinations and Easement Values in East 42nd Street Spur

JUDICIAL DETERMINATIONS AND EASEMENT VALUES—EAST FORTY-SECOND STREET SPUR

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|---|---|---|---|---|---|---|---|
| Street No. | Exhibit No. | Reference | Owner | Frontage of Plot | *Date Value Determined | Date of Payment | Total Payment | Easement Judicially Determined |
| 100-108 | J-1 | Judgment | Shaw | 130' 1" | April 15, 1904 | Feb. 8, 1907 | $181,367.19 | $77,500.00 |
| 110-116 | | Prescription | Gallatin | 100' 0" | | | | |
| 118-120 | J-2 | Settlement | 42nd Street R. R. | 50' 0" | | Nov. 13, 1901 | 5,200.00 | |
| 122-126 | J-3 | Settlement | Manhattan Storage Co. | 125' 0" | | June 27, 1900 | 6,500.00 | |
| Grand Central | | Prescription | Grand Central | 178' 5" | | | | |
| 119-123 | J-7 | Judgment | Winthrop | 75' 0" | Oct. 15, 1896 | Feb. 9, 1900 | 49,296.68 | 31,000.00 |
| 125-127 | J-8 | Judgment | Kernochan | 50' 0" | Oct. 15, 1896 | Feb. 9, 1900 | 31,820.69 | 20,666.66 |
| 129 | J-9 | Judgment | McKim | 25' 0" | Oct. 15, 1896 | Feb. 9, 1900 | 16,033.89 | 10,333.33 |
| 119-129 | J-10 | Settlement | Pinchot | 150' 0" | | April 12, 1901 | 36,000.00 | **19,742.25 |
| 131-133 | | Prescription | N. Y. Society for Cripples. | 125' 0" | | | | |
| 135-143 | J-11 | Settlement | Cooper Union | 167' 2" | | Feb. 13, 1903 | 26,000.00 | |
| 145-147 | J-12 | Judgment | Goelet | 52' 10" | March 25, 1902 | March 27, 1905 | 11,097.76 | 4,500.00 |
| 149-151 | J-13 | Judgment | Hernon | 25' 0" | Dec. 11, 1889 | May 13, 1890 | 2,447.17 | 1,500.00 |
| 153 | J-14 | Judgment | O'Brien | 25' 0" | April 15, 1902 | Jan. 10, 1903 | 3,622.57 | 2,200.00 |
| 155-157 | J-15 | Judgment | Westcott | 50' 0" | Nov. 22, 1898 | Dec. 28, 1899 | 5,712.59 | 5,000.00 |
| 159-161 | J-16 | Settlement | Rothman | 100' 0" | | March 4, 1895 | 6,500.00 | |
| 148-154 | P-1749 | Condemnation Judgment | Renwick | 83' 4" | Oct. 25, 1888 | April 9, 1902 | 15,952.76 | 5,000.00 |
| 156-158 | J-5 | Settlement | Lambier | 41' 8" | | Feb. 21, 1891 | 5,250.00 | |
| 160 | J-6 | Settlement | Weeks | 100' 0" | | Oct. 5, 1892 | 5,845.00 | |
| 128-146 | J-4 | Judgment | Goelet | 195' 0" | March 24, 1902 | Jan. 12, 1905 | 41,069.85 | 17,500.00 |
| | | | | | | | $449,716.15 | $194,942.24 |

956

957

* Average date of Judicial Determination July 2, 1898
Date of Acquisition of Title by Prescription August 26, 1898

** Portion of a payment of $36,000 for a leasehold interest running to 1932 allocable to fee:
This sum was not separately adjudicated but was paid after a trial and also after a judicial determination of the fee value of the reversionary interest.

### THE EASEMENT VALUE BASED UPON JUDICIAL DETERMINATIONS

#### PARK AVENUE TO LEXINGTON AVENUE

| | |
|---|---|
| Frontage on which the value of the easements was judicially determined | 280'1" |
| For this frontage there was awarded a total of | $159,242.24 |
| An average per front foot of | 568.55 |
| The total frontage on this block was | 858'6" |
| Total value of the easements (Park Ave. to Lex. Ave.) | 488,100.19 |

#### LEXINGTON AVENUE TO THIRD AVENUE

| | |
|---|---|
| Frontage subject to judicial determinations | 431'2" |
| Amount awarded | 35,700.00 |
| Average per front foot | 82.80 |
| Total frontage | 840'0" |
| Value of total frontage (Lexington to Third Aves.) | 69,551.44 |
| Value of the entire frontage upon the spur (Park | |

958

## Claimants' Exhibit C-X, Dec. 8, 1930—Sheet Entitled Judicial

JUDICIAL DETERMINATIONS—EAST 42ND STREI

Easements acquired by Prescription and the values judicially determined at the time of the original acquisition of these rights.
(Opn. App. Div.)

959

PARCEL ---- A

NEW YORK CENTRAL RAILROAD.....GRAND CENTRAL TERMINAL
Acquired by.....Prescription
August 26 - 1898

SETTLE

Leasehold Interest in
James W. Pinchot Leasehold ru
$36,000.00 Acquired.....

REVERSIONARY

PARCEL - 1.

| | | |
|---|---|---|
| Winthrop | Ex. J - 7 | K |
| Date of Action | Nov. 6--1890 | D |
| " " Trial | Oct. 13-15, 1896 | |
| Fee Award | $31,000.00 | Fe |
| Damages | 8,509.92 | D |
| Costs & Int. | 9,786.76 | C |
| | | T |
| Total Awarded and Paid | $49,296.68 | |

The Fee value was adjudicated as of October 15-1896 $31,000.00.

960

178' 5" 75' 0"

Acquired by — PRESCRIPTION — JUDICIAL DETERMI

Limit of Area of taking

EAST — FORTY--SECOND

Acquired by — JUDICIAL-DETERMINATION — PRESCRIPTION –

64' 1" 66' 0" 100' 0"

PARCEL --- 4. PARCEL --- 5. PARCEL --- C.

Shaw *et al.* Ex. J - 1 P. 1646

Action - 2. Date of Action.....January 19-1894. Action - 1.
" " Trial.....April 8-15, 1904.

Fee Award $40,500.00 Fee Award $37,000.00

Total Fee .....$77,500.00.
Damages ..... 74,686.11.
Costs & Int. ..... 29,181.08.

Total Awarded & Paid -- $181,367.19.

The Fee value was adjudicated as of April 15-1904.
$77,500.00.

Acquired by Prescription.....Aug. 26-1

Gallatin

PARK ---- AVENUE

2

**et Entitled Judicial Determinations, East 42nd Street, Lex. Ave. to Park Ave.**

TIONS—EAST 42ND STREET, LEXINGTON AVENUE—PARK AVENUE

SETTLEMENT

Leasehold Interest in all three Parcels 150' 0"

nshot Leasehold running to 1932.

Acquired.....April 12, 1901.

REVERSIONARY - - INTEREST

| RCEL - 1. | | PARCEL - 2 | | PARCEL - 3 |
|---|---|---|---|---|
| | Ex. J - 7 | Kernochan | Ex.J.8.P | McKim Ex.J.9 |
| | Nov. 6--1890 | Date of Act | Nov. 6-1890 | Nov. 6-1890. |
| | Oct. 13-15. 1896 | " " Trial | Oct. 15-96 | Oct 15-96 |
| | $31.000.00 | Fee award | $20.666.66 | $10.333.33 |
| | 8.509.92 | Damages | 5.673.27 | 2.836.64 |
| | 9.786.76 | Costs & Int | 5.480.76 | 2.863.92 |
| | | Total Awarded | | |
| nd Paid | $49.296.68 | and paid | $31.820.69 | $16.033.89 |
| was adjudicated as of $31.000.00. | | The Fee value was adjudicated as of October 15-1896 | | |
| | | $20.666.66 | | $10.333.33 |
| 75' 0" | | 50' 0" | | 25' 0" |

PARCEL --- B

HOSPITAL FOR RUPTURED AND CRIPPLED

Acquired by ..... Prescription

August, 26 - 1898

125' 0"

CIAL DETERMINATION — PRESCRIPTION

STREET

RESCRIPTION — SETTLEMENT

100' 0" 50' 0" 125' 0"

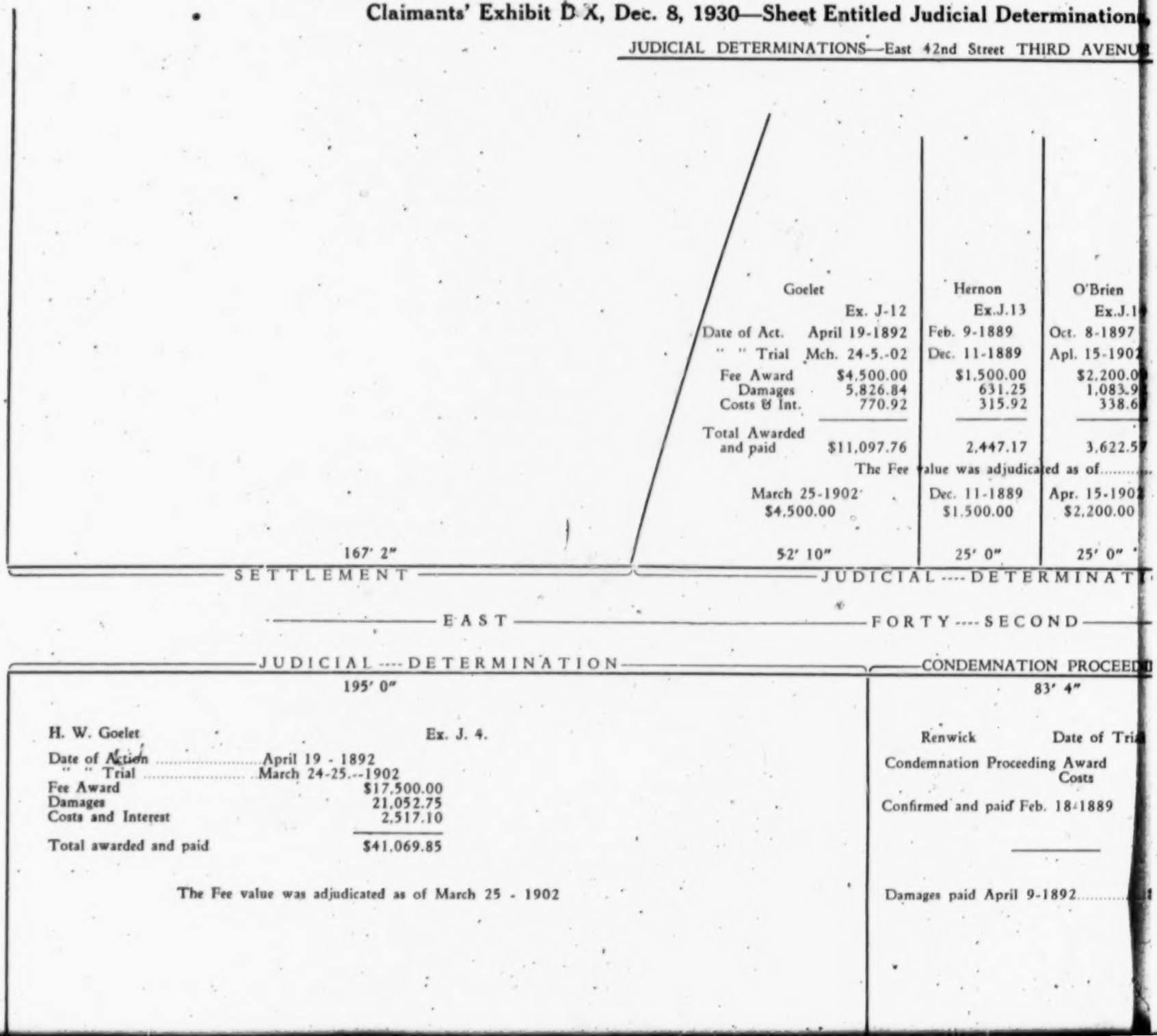
PARCEL --- C.

Prescription.....Aug. 26-1898

LEXINGTON.....

.....AVENUE

## Claimants' Exhibit D X, Dec. 8, 1930—Sheet Entitled Judicial Determinations



*nants' Exhibits*

961

## udicial Determinations, East 42nd St., 3rd Avenue to Lexington Avenue

42nd Street THIRD AVENUE TO LEXINGTON AVENUE.

962

| Hernon | O'Brien | Westcott |
|---|---|---|
| Ex.J.13 | Ex.J.14 | Ex.J.15 |
| Feb. 9-1889 | Oct. 8-1897 | Sept. 7-1892 |
| Dec. 11-1889 | Apl. 15-1902 | Nov. 22-23. 1898 |
| $1,500.00 | $2,200.00 | $5,000.00 |
| 631.25 | 1,083.92 | ..... |
| 315.92 | 338.65 | 712.59 |
| 2,447.17 | 3,622.57 | 5,712.59 |
| alue was adjudicated as of..... | | |
| Dec. 11-1889 | Apr. 15-1902 | Nov. 23-1898 |
| $1,500.00 | $2,200.00 | $5,000.00 |
| 25' 0" | 25' 0" | 50' 0" |

100' 0"

AVENUE

963

L ---- DETERMINATION ——— SETTLEMENT

RY ---- SECOND ——— STREET ———

CONDEMNATION PROCEEDINGS ——— SETTLEMENT

83' 4" | 41' 8" | 100' 0"

Renwick . Date of Trial Oct. 20-88

mnation Proceeding Award $5,000.00
Costs 89.80

ned and paid Feb. 18-1889 $5,089.80

ges paid April 9-1892..... $10,862.96

THIRD

967

## Claimants' Exhibit E-X, Dec. 8, 1930—Sheet Entitled Method of Computing Value of Pinchot Leasehold

Method of computing value of the Pinchot Leasehold 150 x 210.

The reversionary interest was represented by 3 parcels forming the front half of the Pinchot Parcel. The total value of which had been adjusted in 3 decisions, the Winthrop, Kernochan and McKim.

968

The date at which prescriptive title accrued and was acquired by the claimant was August 26, 1898 which closely approximates the average date to which the judicial determinations relates.

The leasehold and reversionary interests in parcels 1, 2 and 3 together comprise the entire estate. The reversionary interest was judicially determined in 1896. Suit was then pending for the leasehold interest in this easement. Mr. Justice Smythe who tried the case died before rendering his decision and the case was then settled for $36,000.00 in 1901.

969

This settlement followed the judicial determinations as to the value of the reversionary interest in the easements. The reversionary determinations were limited to the "fee" damages representing the value of the reversionary interest in the easement while the settlement covered the claim for both the tenant's interest in the easement and his past or so called rental damage.

It is possible however, to make an exact apportionment between the payment for the "fee" and the past damages. The action was begun by the leaseholders July 22nd, 1893 and this pay-

970 *Stipulation re Former Stipulations*

ment was made April 12, 1901. He was therefore entitled to 13 years 8 months and 21 days or at the rate of 6%—82.35% of the fee damage which would therefore be $19,742.25.

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## Stipulation Covering Certain Stipulations Contained in Former Papers on Appeal

New York Supreme Court, First Judicial Dis-
971 trict, County of New York.

[Same Title]

It is hereby stipulated and agreed by and between the parties herein and hereto for the purpose of these appeals, as follows:

First.—That the stipulation dated August 15, 1928, covering certain Acts of the Legislature of the State of New York, namely, Chapter 788 of the Laws of 1917 (City's Exhibit 6), Chapter 611 of the Laws of 1919 (City's Exhibit 7), Chapter
972 635 of the Laws of 1923 (City's Exhibit 8), Chapter 140 of the Laws of 1850 (Claimants' Exhibit "B"), Chapter 697 of the Laws of 1866 (Claimants' Exhibits "A," "B," "C" and "Q"), Chapter 489 of the Laws of 1867 (Claimants' Exhibits "A," "B," "C" and "Q"), Chapter 855 of the Laws of 1868 (Claimants' Exhibits "A," "B," "C" and "Q"), Chapter 595 of the Laws of 1875 (Claimants' Exhibits "A," "B," "C" and "Q) and Chapter 606 of the Laws of 1875 (Claimants' Exhibits "A," "B," "C" and "Q") printed at pages 1877 and 1878 of Volume III of Claimants' Exhibit "A-X" of December 8, 1930, being "Pa-

pers on Appeal from Final Decree of Supreme Court, New York County, in four volumes" received and marked in evidence at page 202 of the record;

Second.—That the stipulation dated October 26, 1925, covering City's Exhibit 69 and certain facts in the Case printed at pages 1239 to 1241 inclusive of Volume III of said Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in four volumes"; 974

Third.—That the stipulation, dated August 15, 1928, covering City's Exhibits 24 to 36 inclusive printed at pages 1126 to 1128 inclusive of Volume II of said Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in four volumes";

Fourth.—That the stipulation, dated October 11, 1928, covering Claimants' Exhibit "Z," printed at pages 1870 and 1871 of Volume III of said Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in four volumes"; 975

Fifth.—That the stipulation dated December 11, 1928, covering Central Union Trust Co.'s Exhibits "A" and "B" and The Equitable Trust Co.'s Exhibit "B," printed at pages 1881 to 1883 inclusive of Volume III of said Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme Court, New York County, in four volumes"; and

976 *Stipulation re Former Stipulations*

Sixth.—That the stipulation dated December 14, 1928, covering Claimants' Exhibits (photographs) "H-1" to "H-38" inclusive, "H-42" to "H-46" inclusive, "R," "R-1" to "R-13" inclusive, "S" and "S-1" to "S-16" inclusive, and City's Exhibits (photographs) "46-A" to "46-P," "66," "67" and "68," printed at pages 1884 to 1886 inclusive of Volume III of said Claimants' Exhibit "A-X" of December 8, 1930, being "Papers on Appeal from Final Decree of Supreme
977 Court, New York County, in four volumes" are considered as stipulations made on the appeals herein by all the parties herein and hereto and are applicable herein and hereto with the same force and effect as if the above stipulations were physically printed in the record on appeal herein and any party herein and hereto may use and refer to the contents of the above stipulations with the same force and effect as if they were physically printed in the record on appeal herein.

It is further stipulated and agreed by and between the parties herein and hereto that in case
978 of an appeal by any party herein and hereto to the Court of Appeals from the order or orders of the Appellate Division to be made and entered herein on these appeals the contents of the above stipulations are to be considered a part of the record on appeal to be used in the Court of Appeals and may be used and referred to in that Court by any party herein and hereto with the same force and effect as if the stipulations and the contents thereof were physically printed in the record on appeal to be used in the Court of Appeals.

Dated, New York, June 30, 1932.

James L. Quackenbush, Attorney for Interborough Rapid Transit Company.

William Roberts, Attorney for Manhattan Railway Company.

George Welwood Murray, Attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee, etc. 980

Davies, Auerbach & Cornell, Attorneys for Central Hanover Bank and Trust Company (formerly Central Union Trust Company of New York), as Trustee, etc.

Page and Page, Attorneys for the Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), *et al.*

981

Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation.

Shearman and Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation.

Middlebrook and Sincerbeaux, Attorneys for The Manhattan Storage and Warehouse Company.

982 *Order Resettling and Amending Order*

Parsons, Closson and McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art.

Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York.

**Order of Appellate Division Entered July 9, 1932, Resettling and Amending *nunc pro tunc* Order of Appellate Division Entered July 18, 1930, Denying Application for Leave to Appeal to Court of Appeals**

983

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on the 8th day of July, 1932.

Present:—

Hon. Edward R. Finch, Presiding Justice.
" Edgar S. K. Merrell
984 " John V. McAvoy
" Francis Martin
" Alfred H. Townley, Justices.

[Same Title]

On reading and filing the annexed consents of William Roberts, Attorney for Manhattan Railway Company, Davies, Auerbach & Cornell, Attorneys for Ceneral Hanover Bank and Trust Company (successor to Central Union Trust Company), James L. Quackenbush, Attorney for Interborough Rapid Transit Company, Arthur J.

W. Hilly, Corporation Counsel, Attorney for the City of New York, Page & Page, Attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), *et al.*, Middlebrook & Sincerbeaux, Attorneys for Manhattan Storage & Warehouse Company, Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation, Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science & Art, Shearman & Sterling, Attorneys for Robert Walton Goelet, *et al.*, Hollander & 986
Bernheimer, Attorneys for Seward W. Ehrich, Inc., dated July 1st, 1932, it is

Ordered, That the order of this Court dated July 18, 1930, and entered in the office of the Clerk thereof on the same day, be and the same hereby is resettled and amended *nunc pro tunc*, so as to read as follows:

"At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 18th day of July, 1930. 987

Present:—

Hon. Edward R. Finch
" Edgar S. K. Merrell
" Francis Martin
" Henry L. Sherman, Justices.

[Same Title]

A motion having been made by The City of New York, Bowman Biltmore Hotels Corporation and others, Cooper Union for the Advance-

988 *Order Resettling and Amending Order*

ment of Science and Art, Robert Walton Goelet, and others, Pershing Square Building Corporation, Manhattan Storage and Warehouse Company, and Seward W. Ehrich, Inc., appellants, pursuant to Section 588, subdivision 4, of the Civil Practice Act, for leave to appeal to the Court of Appeals from the order of this Court entered herein on the 3rd day of June, 1930.

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the
989 affidavit of Joel J. Squier in support of said motion, and after hearing Mr. Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Messrs. Page and Page, Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, Messrs. Parsons, Closson and McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art, Messrs. Shearman and Sterling, Attorneys for Robert Walton Goelet, *et al.*, Mr. Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation, Messrs. Middlebrook and Sincerbeaux, Attorneys for Manhattan Storage and Warehouse Company, and Messrs.
990 Hollander & Bernheimer, Attorneys for Seward W. Ehrich, Inc., for the motion and Mr. James L. Quackenbush, attorney for Interborough Rapid Transit Company, Mr. William Roberts, attorney for Manhattan Railway Company and Messrs. Davies Auerbach & Cornell, attorneys for Central Union Trust Company of New York, appearing and filing brief in opposition thereto,

It is hereby unanimously ordered that the said motion be and the same is hereby denied."

[Entered and filed in the office of the Clerk of the Appellate Division, First Judicial Department, on July 9, 1932.]

991

**Opinion of Mullan, J.**

Supreme Court, New York County, Special Term, Part III.

Matter of City of N. Y., &c. (East 42d St. Spur) —This matter is before me for the purpose of fixing the amount of money which the City of New York shall pay to the elevated railroad company for regaining and adding to the use of the people the portion of the space above the surface of the street formerly occupied by the elevated railroad structures in East Forty-second 992
street, from Third avenue to Park avenue. The matter was before the Special Term and the Appellate Division previously, at which times additional elements of compensation were involved. When the case was decided by the Appellate Division (229 App. Div., 619) the court divided those elements into four items: (1) The value of the franchise to build, maintain and operate the spur and occupy the space (p. 619). They decided (p. 622) that no monetary allowance should be made for those rights and they have not remitted that item for reconsideration. (2) 993
The value of the elevated structure. The Appellate Division decided that item to be measurable by its value as taken down (p. 622). The parties have agreed that the value so determined is $235, and I so find. (3) The cost of remodeling the station at Third Avenue and Forty-second Street, as to which the Appellate Division affirmed the Special Term, and did not remit the item for reconsideration. (4) The value of the so-called right to impair light, air and access appurtenant to the land abutting upon East Forty-second street. The sole question before me is fixation of

the value of the "so-called rights" in item 4. It is futile for me to discuss the nature of those rights. In remitting the matter the Appellate Division has said that these "so-called rights" are property, and it has said (a) that the method by which they are to be appraised is to ascertain their value at the time of taking (by the city) upon the basis judicially determined as their value at the time of their acquisition (by the railroad; p. 628); (b) that the value as fixed must not be
995 less than that sum (p. 628), and (c) that it should not be more than that sum (p. 629). These "so-called rights" were acquired over a period of twenty years, in twenty different parts. There are three of these "so-called rights" which until now were always said to be acquired by "prescription." But on this hearing the city raises a question concerning a part of one of the three as to whether the rights were ever acquired by the elevated railroad. This question, it seems, was not before the Appellate Division, which divided the rights being considered by them into four classes, according to the method of their ac-
996 quisition, (1) judicial determination in property owners' suits, (2) settlement, (3) condemnation, and (4) prescription. There is no mention of any class involving a dispute as to ownership in the elevated railroad company. It therefore becomes my duty to ascertain whether, as to the particular parcel now under discussion, there was an acquisition; and (as I have determined that there was, but by a method not mentioned by counsel in the Appellate Division) I must also determine whether the elevated railroad company is entitled to payment for a right acquired in this fifth

way. The present part of the discussion relates to the land termed in the briefs "The Depew Place Frontage." The elevated railroad company first set running the time of prescription on August 26, 1878, and if it had asserted its title continuously it would have acquired title by prescription on August 26, 1898. I overrule the contention of the city that the elevated railroad company is not entitled to any award for rights acquired by prescription. I rule that an award must be made for the rights appurtenant (1) to the [illegible]tal frontage extending 125 feet westerly 998
from Lexington avenue; (2) to the part of the Grand Central Station frontage which extends westerly from the westerly line of Depew place as it formerly existed 128 feet 5 inches, and (3) to the Gallatin frontage of 100 feet on the south side, beginning 175 feet west of Lexington avenue. These were concededly acquired by prescription. The history of the Depew place frontage is as follows: In 1878, when the elevated road was built, the fee was in private persons who were owners of the easements. The elevated 999
railroad could not acquire those rights by prescription until 1898. In 1885 the running of the prescription was interrupted by the acquirement of the fee for street use by the city. Although later the fee passed again into private hands, twenty years had not expired from the date of that grant when the city took all the rights here involved. Therefore it seems quite evident that the elevated railroad company never acquired the rights by prescription. I think, however, it did acquire the rights the instant the city took title to the fee in 1885. The original franchise and the written consents gave to the elevated railroad

1000 *Opinion of Mullan, J.*

company all the rights necessary to the operation of the spur which the city had. This grant quite evidently would have included the "easements of light, air and access" appurtenant to the Depew place frontage had it been owned by the city as a proprietor. It would seem axiomatic that the city when the franchise was granted and the consents were given did not retain any easements of light, air and access in the "frontage" of Lexington avenue north and south of East Forty-
1001 second street, nor in the similar frontages of any street that the elevated railroad intersects. Having in 1878 granted such rights then appurtenant to the frontage in private ownership as to the Depew place frontage (which it at the time did not possess) the grant enured the instant the grantor acquired such rights. If the taking for street use in 1885 extinguished the easements, then the grant of the city and state conveyed the right to the elevated railroad company to prevent the assertion in future of any such rights. For our purposes these two kinds of rights are not
1002 distinguishable. It may very well be that a city street has no such easement in an intersecting street, for such easements have always been discussed as appurtenant to property privately held. But, in 1885, simultaneously with the taking for street purposes, those rights, of whatever kind, passed to the elevated railroad company by the consents and the franchise. The Appellate Division has ruled that the franchise and right to occupy are of no value. It has also ruled (p. 621) that for purposes of valuation the franchise rights and the right of occupation are an entity. This right to obstruct light, air and access as to an

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intersecting street is either a right given by the franchise or a right to occupy. Therefore these rights have no value. If I am in error as to this, then these rights appurtenant to Depew place were not acquired by the elevated railroad company and the same result (no award) follows. Of course a different result might be reached if the city owned this land as a proprietor. It has been conceded that had compensation been allowed for the Depew place "frontage" its amount would be $29,157.48. The elevated railroad company urges that the right of light, air and access is not held by the city in trust, but is held by the city as a private owner. But as it is appurtenant to the land and the land is held solely in trust I cannot see how an appurtenant right to allow or prevent obstruction can be held in any capacity except in trust. If private trustees hold the land, surely the easements are held by them also in trust. There is no doubt that these "easements" are a different kind of property from any other appurtenant to land. But they exist as to all abutting land in private ownership. When the city takes title privately to a piece of land which has such easements appurtenant to it the easements are not wiped out. Such rights must exist in the elevated railroad company as to every street that the structure crosses or else be extinguished by the dedication to street use. Are they then of a different class from the right to encumber East Forty-second street? I do not think so. If these rights against the city have a value, for which the elevated railroad company must be compensated, then the right to encumber East Forty-second street has a value for which the railroad company must be compensated, and the converse is also

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true. I confess that the ruling seems to create an anomaly, but I think that the amonaly is inherent in the nature of the right against the city. If such rights are of any value, a like value inures as to the width of Lexington avenue north and south of East Forty-second street. But that the city should pay to recover the Lexington avenue rights (even after my tentative opinion suggested it) is not claimed. I think Depew place, as to the rights to invade the light, air and access,
1007 is in the same category as other intersecting streets. The railroad acquired them under the consents and franchise as appurtenant to the use of the city streets. The fact that the street has been since closed does not alter their character. That they will be returned to the abutting land (now in private hands) is immaterial (229 App. Div., 622). Furthermore, throughout the entire elevated railroad litigation no right granted by the city other than as a proprietor has ever been considered as being this kind of an easement. The railroad has never been taxed for the right
1008 to cross a city street as on an easement of this character, and it never paid for such a right. As to the block between Third and Lexington avenues, my task is in effect that of an accountant. In accordance with the instructions of the Appellate Division I award $4,500 for the Goelet rights on the north side, frontage 52 feet 10 inches; $1,500 for the Hernon rights; frontage 25 feet; $2,200 for the O'Brien rights, frontage 25 feet; $5,000 for the Wescott rights, frontage 50 feet; $17,500 for the H. W. Goelet rights on the south side, frontage 195 feet; $5,000 for the Renwick rights, frontage 83 feet 4 inches. These figures,

which were before the Appellate Division, make it quite clear that an average value per front foot is to be applied. These items of fee damage per front foot vary from $60 to $100. The city urges that an average is unjustified and that no method of applying the criterion of judicial determination is possible. The method of average has authority other than that of the Appellate Division (Langdon *v.* Mayor, 133 N. Y., 628), which, of course, I consider only to construe their meaning. I am bound to follow their instructions. Applying the average, I determine that the value per front fooot on the block from Third avenue to Lexington avenue as determined judicially is $82.80. Applying this unit to the frontages not involved in the judicial determinations, we get a sub-total of $33,851.40, and adding the sum of the judicial determinations, we get a total of $69,-551.40, which I award as the damage for the easterly block. I agree with the contention of the elevated railroad company that the units in the two blocks are so different in amount that the blocks should be separately considered. When I seek to apply the above method to the westerly block (which I rule I must do) the task becomes more intricate. On that block there are but two judicial determinations of entire fee damage, both on the south side, which result in a unit of $596 per front foot. On the north side there are but three judicial determinations, which, unfortunately, do not determine the whole fee damage. This happens as follows: The land was held as one piece by Pinchot as tenant under a long term lease. The reversion, however, was divided into three parts, each reversioner being entitled to a

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distinct plot of the land. Winthrop had the reversion of the westerly seventy-five feet; Kernochan that of the fifty feet next east, and McKim that of the twenty-five feet next east. The fee damage to those reversions was judicially determined in three actions. The units are identical, $413.33 per front foot. The leasehold interest had been submitted for judicial determination, but the judge before whom the suit was pending died before judgment. The suit was then settled for
1013 $36,000. If we can determine what part of the settlement was fee damage we can add it to the value of the reversionary fee damage and obtain the total damage and we may then average that with the $596 unit on the other side. The elevated railroad company, without waiving its right to attack the rule of award, urges two ways in which the Appellate Division method may be applied. It showed on trial that in several instances in its settlements it adopted a method of appraising fee damage and giving as rental damage 6 per cent. on that sum. If we apply that method the fee damage to the leasehold interest is $19,742.
1014 I can merely say that the method is crude in the extreme, not based on judicial determination and plainly *quo ad hoc*. One alternative to the adoption of that unit is to rule that the only judicial unit established is $596. This alternative is not suggested by any one and is not adopted. The second method adverted to by the elevated railroad company is to average with the $596 unit on the south side the partial fee damage unit on the north side. This admittedly, will not give a correct unit and will result in no award for any part of the $36,000. It is rejected. It seems to me, however, that there is a method of arriving at

the fee damage to the leasehold "upon the basis of the judicial determination" of the fee damage to the reversion. An analysis of the three partial awards shows (1) that a single unit for fee damage was employed; (2) that a single unit (different from that just mentioned) was employed for rental damage; (3) that the unit of interest was the same on all parcels, and (4) the only difference in any amount per front foot is a slight variation in costs, which can be disregarded. Using these units we find that the fee 1016
damage caused to the reversion bears to the total award a ratio of 62 to 97. These awards were made for the identical use to which all four parties put the land, and, therefore, the same ratio may be applied to the fourth interest (*i. e.*, leasehold), and if we use that criterion we are determining the leasehold fee damage "upon the basis of judicial determination." This gives: Fee damage 64 per cent., other items 36 per cent. of the total paid (more accurately 63.824568 per cent. and 36.175432 per cent.). The result reached accords almost exactly with the value of the ease- 1017
ments as found for the entire road (People *ex rel.* Manhattan RR. Co. *v.* Barker, 165 N. Y., 305, 315), where the court found that the fee damage was two-thirds of the total paid. This method results in a figure for the leasehold fee damage of $22,976.84. Adding that sum to the fee damage of the reversion rights we get for the total judicial determination on the north side $84,976.84, which I award. From this, by average with the $596 unit across the street, the unit for the westerly block is computed as $581.1497 per front foot. The railroad waives the slight arithmetical error caused by the fact that the unit of

$596 should be slightly higher because the lots are not full depth. I allow for the Shaw frontage of 130 feet 1 inch $77,500. The totals, eliminating Depew place (for which no award is made) are as follows: Easterly block, $69,551.40; westerly block (eliminating Depew place), $469,566.01; alteration of station $80,000; structure, $235. Total award, $619,352.41. If the three reversionary interests had been calculated on the entire depth to Forty-third street, as the leasehold
1019 was, we would have another method for figuring the value of the leasehold "on the basis of judicial determination" by comparing the land value of the reversion with the value of the building on the leasehold owned by the lessees. Unfortunately, however, the value of the reversion is calculated only for the half of the plot fronting on Forty-second street. The extra depth had a frontage both on Depew place and on Forty-third street. Supplying the defect in judicial determination by estimating that the extra depth is worth three-quarters of the Forty-second street frontage makes the land worth $376,000. The
1020 building was worth $135,000. This gives a ratio of 64 to 36, the same as is found by the method mentioned supra. I do not adopt this method because it involves factors not covered by judicial determination. I only mention it to show that in all probability the proportion found is accurate and that the Court of Appeals in adopting (in the Barker case), for fee damage, a ratio of two-thirds of the total paid was mathematically correct and that it did not fix a merely arbitrary ratio. (New York Law Journal of April 24, 1931, pages 476-477—141 Misc., 565.)

## Opinion of Ingraham, J.

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Supreme Court, New York County, Special Term, Part VI.

Matter of the City of New York (East 42nd. Street Spur). This proceeding came on for trial before the late Mr. Justice Mullan, who died after testimony was taken and a final decree prepared, but before the final decree could be signed.

The case was retried before me and the record, including all of the testimony and exhibits taken before Mr. Justice Mullan, was introduced, 1022 all of the parties consenting that it be received with the same force and effect as if the witnesses were called and had testified, and the same objections therein had been made. I have viewed the premises and have carefully considered such testimony, the objections thereto and the exceptions reserved, and I am fully in accord with those rulings, and I allow all exceptions thereto taken. I concur in the awards made by Mr. Justice Mullan and in the reasons therefor given in his opinion, which I adopt without setting them forth, since a repetition of them here would be fruitless. 1023 I award the sum of $619,352.41 for the property taken. The Corporation Counsel is directed to prepare a tentative decree. (New York Law Journal of February 27, 1932, page 1081—143 Misc., 129.)

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## Memorandum of Ingraham, J.

Supreme Court, New York County, Special Term, Part VI.

Matter of City of N. Y. (East 42d St. El. Spur) —All the objections filed to the supplemental and amended tentative decree signed by me on March 1, 1932, and filed in the office of the Clerk of the County of New York on March 7, 1932, are overruled. Let the corporation counsel submit the final decree. (New York Law Journal of April 11, 1932, page 1993.)

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## Waiver and Stipulation

It is hereby stipulated and agreed that the foregoing are true and correct copies of the original papers and of the whole thereof, together with all the evidence taken before the Supreme Court relevant to and sufficient to present the merits of the questions involved in these appeals, used in the Court below, and upon which the Final Decree of

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the Supreme Court appealed from was made, together with the said Final Decree of the Supreme Court appealed from, and the notices of appeal therefrom and the opinion of the late Mr. Justice Mullan and the opinion and memorandum of Mr. Justice Ingraham, who made the Final Decree of the Supreme Court appealed from, all of which papers are now on file in the office of the Clerk of the County of New York; and certification thereof, pursuant to the provisions of Sections 170 and 616 of the Civil Practice Act, or otherwise, is hereby waived.

Dated, New York, July 12th, 1932.

Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Appellant-Respondent.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company, Appellant-Respondent.

William Roberts, Attorney for Manhattan Railway Company, Appellant-Respondent. 1028

George Welwood Murray, Attorney for The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, Appellant-Respondent.

Davies, Auerbach & Cornell, Attorneys for Central Hanover Bank and Trust Company, successor to Central Union Trust Company, of New York, Appellant-Respondent. 1029

Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation, Appellant-Respondent.

Shearman & Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation, Appellants-Respondents.

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Middlebrook & Sincerbeaux, Attorneys for Manhattan Storage & Warehouse Company, Appellant-Respondent.

Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art, Appellant-Respondent.

Page & Page, Attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel
1031 Biltmore); Bates-Bowman Corporation (Murray Hill Hotel); One Twenty Park Avenue Realty Corporation; Corn Exchange Bank; The Bowery Savings Bank; Lincoln Forty Second Street Corporation; Carbide & Carbon Realty Co., Inc.; Vanderbilt Avenue Building Corporation; D. A. Schulte, Inc.; John Curry Real Estate, Inc.; J. Chr. G. Hupfel Co., Inc.; Rogers Peet Company; Princeton Club of New York; News Syndicate Co., Inc.; F. & S. Rockaway Restaurant, Inc.; Tishman Realty and Construction Co., Inc.; The Oceanic Investing Corporation; Borden Realty
1032 Corporation; R-W Realty Company, Inc.; Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Anahma Realty Corporation and William Volk, Appellants-Respondents.

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## Notice of Appeal of The City of New York to Court of Appeals

New York Supreme Court, New York County

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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Sirs: Please take notice, that The City of New York, pursuant to leave granted in an order of the Appellate Division of the Supreme Court, First Judicial Department, dated April 21, 1933, and filed and entered in the office of the Clerk of said Court on the 1st day of May, 1933, hereby appeals to the Court of Appeals of the State of New York from the final order of said Appellate Division dated March 24, 1933, and filed and entered in the office of the Clerk of said Court on the same day and a certified copy of which was filed and entered in the office of the

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1036 Clerk of the County of New York on March 29, 1933, which unanimously affirms the supplemental and amended final decree of the Supreme Court, New York County dated May 7, 1932, and filed and entered in the office of the Clerk of the County of New York, May 12, 1932, wherein and whereby there was awarded to Manhattan Railway Company for Damage No. 1 the sum of $932,125.38, made up of the principal sum of $619,352.41, and $312,772.97 interest from the date of the vesting of title to the property taken
1037 to the date of the final decree; and The City of New York appeals from the whole and every part of the said order of affirmance.

And further take notice, that upon its said appeal from the said final order of affirmance of the said Appellate Division dated March 24, 1933, The City of New York will bring up for review the intermediate order of the said Appellate Division and the whole and every part thereof, dated May 9, 1930, and filed and entered in the office of the clerk of said court on
1038 June 3, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on June 26, 1930, which reversed, vacated and set aside the final decree of the Supreme Court, New York County, herein, dated February 28, 1928, and entered and filed in the office of the Clerk of the County of New York on March 14, 1928, and remitted the said final decree and the proceeding herein to the Supreme Court, New York County, without a jury, particularly that part of the said intermediate order which reads, "Ordered, That the said Final Decree and the within proceeding be

and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award for Damage No. 1 in the above entitled proceeding in accordance with the opinion of this Court and to make the assessment for benefit in the above entitled proceeding in accordance with law," and which directs the Supreme Court, New York County, to include in the award for Damage No. 1 a sum as and for the value of rights of the railroad to impair light, air and access appurtenant to property abutting upon East 42nd Street. 1040

Dated, New York, May 22, 1933.

Yours, etc., Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Office & P. O. Address, Municipal Building, Borough of Manhattan, City of New York.

To: Daniel E. Finn, Esq., Clerk of the County of New York. Charles Franklin, Esq., Attorney for Manhattan Railway Company, 165 Broadway, Borough of Manhattan, City of New York. 1041 Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, City of New York. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank & Trust Company, etc., 1 Wall Street, Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., 15 Broad Street, Borough of Manhattan, City of New York. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, 100 Broadway, Borough of Manhattan, City of New York.

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## Notice of Appeal of Interborough Rapid Transit Company to Court of Appeals

Supreme Court, First Judicial District, County of New York.

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In the Matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever
1043 owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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1044 Please take notice that pursuant to the leave granted by the Appellate Division for the First Department in the above entitled proceeding, in an order duly made and filed in the office of the Clerk of that Court on the first day of May, 1933, the claimant Interborough Rapid Transit Company hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the First Department entered in the office of the Clerk of said Appellate Division on the 24th day of March, 1933, a certified copy of which order was filed in the

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office of the Clerk of New York County on the 29th day of March, 1933, which order affirmed the final decree of the Supreme Court, New York County, entered and filed in the office of the Clerk of New York County on the 12th day of May, 1932.

And appellant Interborough Rapid Transit Company intends to bring up for review upon such appeal the intermediate order dated May 9, 1930, entered herein in the office of the Clerk of the Appellate Division of the Supreme Court on the 3rd day of June, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on the 26th day of June, 1930, which order reversed the final decree of the Supreme Court dated February 28, 1928, entered and filed in the office of the Clerk of the County of New York on March 14, 1928, and said appellant appeals from each and every part of said order as well as from the whole thereof.

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Dated, New York, May 19, 1933.

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Yours, &c., Hornblower, Miller, Miller & Boston, Attorneys for Appellant, Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, New York City.

To: Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Municipal Building, Borough of Manhattan, New York City, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, No. 55 Liberty Street, Borough of Manhattan,

1048 *Notice of Appeal of Interborough Rapid Transit Co.*

New York City, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, No. 511 Fifth Avenue, Borough of Manhattan, New York City, N. Y. Shearman & Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, No. 65 Wall Street, Borough of Manhattan, New York City, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., No. 57 William Street, Borough of Manhattan, New York
1049 City, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, No. 52 William Street, New York City, N. Y. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., No. 15 Broad Street, Borough of Manhattan, New York City, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, No. 1 Wall Street, Borough of Manhattan, New York City, N. Y. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts,
1050 Receiver for Manhattan Railway Company, No. 100 Broadway, Borough of Manhattan, New York City, N. Y. Charles Franklin, Esq., Attorney for Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City, N. Y. and Daniel E. Finn, Esq., Clerk of New York County.

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## Notice of Appeal of Manhattan Railway Company to Court of Appeals

Supreme Court—First Judicial District, County of New York.

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In the Matter of the Application of the City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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Please take notice that pursuant to the leave granted by the Appellate Division for the First Department in the above entitled proceeding, in an order duly made and filed in the office of the Clerk of that Court on the 1st day of May, 1933, the claimant-appellant, Manhattan Railway Company hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the First Department entered in the office of the Clerk of the said Appellate Division on the 24th day of March, 1933, a

1054 *Notice of Appeal of Manhattan Railway Co.*

certified copy of which order was filed in the office of the Clerk of New York County on the 29th day of March, 1933, which order affirmed the final decree of the Supreme Court, New York County, entered and filed in the office of the Clerk of New York County on the 12th day of May, 1932.

And claimant-appellant Manhattan Railway Company intends to bring up for review upon such appeal the intermediate order dated May
1055 9, 1930, entered herein in the office of the Clerk of the Appellate Division of the Supreme Court on the 3rd day of June, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on the 26th day of June, 1930, which order reversed the final decree of the Supreme Court dated February 28, 1928, entered and filed in the office of the Clerk of the County of New York on March 14, 1928, and said claimant-appellant appeals from each and every part of said order as well as from the whole thereof.

1056 Dated, New York, May 19, 1933.

Yours, &c., Charles Franklin, Attorney for Appellant, Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City.

To: Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Municipal Building, Borough of Manhattan, New York City. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, No. 55 Liberty Street, Borough of Manhattan,

New York City. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, No. 511 Fifth Avenue, Borough of Manhattan, New York City. Shearman & Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, No. 65 Wall Street, Borough of Manhattan, New York City. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., No. 57 William Street, Borough of Manhattan, New York City. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper 1058
Union for the Advancement of Science and Art, No. 52 William Street, New York City. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., No. 15 Broad Street, Borough of Manhattan, New York City. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, No. 1 Wall Street, Borough of Manhattan, New York City. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, No. 100 Broadway, Borough of Manhattan, New York 1059
City. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Appellants Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, New York City and Daniel E. Finn, Esq., Clerk of New York County.

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## Notice of Appeal of William Roberts, Receiver of Manhattan Railway Company, to Court of Appeals

Supreme Court of the State of New York, County of New York.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations,

1061 platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances

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Sirs: Please take notice that William Roberts, Receiver of claimant Manhattan Railway Company, hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court for the First Judicial Department entered and filed in the office of the Clerk of said Court on the 24th day of March, 1933, a certified copy of which order was filed in the office of the Clerk of the County of New York on the 29th day of

*Notice of Appeal of William Roberts, Receiver of Manhattan Railway Co.* 1063

March, 1933, affirming a Final Decree of the Supreme Court, New York County, herein, dated May 7, 1932, and entered and filed in the office of the Clerk of the County of New York on the 12th day of May, 1932, which makes and contains an award of $619,352.41 principal and $312,772.97 interest to Manhattan Railway Company for Damage No. 1, and said William Roberts, Receiver of claimant Manhattan Railway Company, appeals from each and every part of said order as well as from the whole thereof. 1064

Please also take notice that the said William Roberts, Receiver of Manhattan Railway Company, will bring up for review upon the appeal from said order, the intermediate order of the Appellate Division of the Supreme Court for the First Judicial Department dated May 9, 1930 and entered in the office of the Clerk of said Court on the 3rd day of June, 1930, a certified copy of which order was filed in the office of the Clerk of the County of New York on the 26th day of June, 1930, reversing, vacating and setting aside that part of a Final Decree of the Supreme Court, New York County, dated February 28, 1928, and entered and filed in the office of the Clerk of the County of New York on March 14, 1928, which made and contained an award of $975,438 principal and $247,273.53 interest to the Manhattan Railway Company for Damage No. 1. 1065

This appeal is taken pursuant to leave granted by the Appellate Division, First Judicial Department, by an order dated the 21st day of April, 1933, and entered and filed in the office of the Clerk of said Court on the 1st day of May, 1933.

Dated, New York, May 22, 1933.

1066 *Notice of Appeal of William Roberts, Receiver of Manhattan Railway Co.*

"Yours, etc., Hughes, Schurman & Dwight, Attorneys for William Roberts, Receiver of Manhattan Railway Company, Claimant-Appellant, Office and P. O. Address, 100 Broadway, Borough of Manhattan, New York City.

To Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Appellant-Respondent, Municipal Building, Borough of Manhattan, New York City, N. Y. Page
1067 & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, Appellants-Respondents, 55 Liberty Street, Borough of Manhattan, New York City, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, Appellant-Respondent, 511 Fifth Avenue, Borough of Manhattan, New York City, N. Y. Shearman & Sterling, Esqs., Attorney for Robert Walton Goelet, *et al.*, Appellants-Respondents, 55 Wall Street, Borough of Manhattan, New York City, N. Y. Middlebrook &
1068 Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., Appellant-Respondent, 57 William Street, Borough of Manhattan, New York City, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, Appellant-Respondent, 52 William Street, Borough of Manhattan, New York City, N. Y. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Claimant-Appellant, Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, New York City, N. Y. Charles Franklin, Esq., Attorney for Claimant-Appellant, Manhattan Railway Company, 165 Broadway, Borough of Manhattan, New York City, N. Y. George Wel-

wood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., Appellant-Respondent, 15 Broad Street, Borough of Manhattan, New York City, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, etc., Appellant-Respondent, 1 Wall Street, Borough of Manhattan, New York City, N. Y., and Daniel E. Finn, Esq., Clerk of New York County.

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1070

## Notice of Appeal of Chase National Bank of the City of New York to Court of Appeals

Supreme Court, New York County.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

1071

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Sirs: Please take notice that The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable

1072 Trust Company of New York, as Trustee under a Deed of Trust of the Manhattan Railway Company dated June 1, 1913, and a claimant-objector herein, hereby appeals, by permission, to the Court of Appeals from the Order of the Appellate Division of the Supreme Court, First Department, entered in the office of the Clerk of that Court on the 24th day of March, 1933 (a certified copy of which was filed in the office of the Clerk of the County of New York on the 1073 29th day of March, 1933) unanimously affirming the supplemental and amended final decree of the Supreme Court, New York County, dated May 7, 1932, and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932, and said The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee, etc., hereby appeals from each and every part of said order of affirmance, as well as from the whole thereof.

1074 Please take further notice that said The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee, etc., will bring up for review on said appeal the intermediate order of the Appellate Division of the Supreme Court, First Department, dated May 9, 1930, and entered in the office of the Clerk of that Court on the 3rd day of June, 1930 (a certified copy of which was filed in the office of the Clerk of the County of New York on the 26th day of June, 1930), reversing, vacating and setting aside the final decree of the Supreme Court, New York County, entered in the office of the

Clerk of the County of New York on the 14th day of March, 1928, and remitting the said final decree and the proceeding to the Supreme Court with directions to make award for damage No. 1 in accordance with the opinion of the Appellate Division, First Department, and will also bring up for review on said appeal the said decree of the Supreme Court, New York County, entered in the office of the Clerk of the County of New York on the 14th day of March, 1928.

Dated, New York, N. Y., May 19, 1933.

Yours, &c., George Welwood Murray, Attorney for Claimant-Objector, The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under Deed of Trust, etc., 15 Broad Street, Borough of Manhattan, New York, N. Y.

To: The Clerk of the County of New York. Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Municipal Building, Borough of Manhattan, New York, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, No. 55 Liberty Street, Borough of Manhattan, New York, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, No. 511 Fifth Avenue, Borough of Manhattan, New York, N. Y. Shearman & Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, No. 55 Wall Street, Borough of Manhattan, New York, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse

1078 Co., No. 57 William Street, Borough of Manhattan, New York, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, No. 52 William Street, Borough of Manhattan, New York, N. Y. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, New York, N. Y. Charles Franklin, Esq., Attorney for The Manhattan Railway Company,
1079 165 Broadway, Borough of Manhattan, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, etc., No. 1 Wall Street, Borough of Manhattan, New York, N. Y. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for The Manhattan Railway Company, No. 100 Broadway, Borough of Manhattan, New York, N. Y.

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1080 **Notice of Appeal of Central Hanover Bank and Trust Company to Court of Appeals**

Supreme Court, Appellate Division, First Department.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever,

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of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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Sirs: Please take notice that, pursuant to leave granted by the Appellate Division of the Supreme Court, First Department, granted in an order dated April 21, 1933, and entered in the 1082
office of the clerk of said Appellate Division of the Supreme Court, First Department on May 1, 1933, Central Hanover Bank and Trust Company, as trustee under the Consolidated Mortgage of Manhattan Railway Company, hereby appeals to the Court of Appeals of the State of New York, from an order of the Appellate Division of the Supreme Court, First Department, entered in the office of the Clerk of the Appellate Division of the Supreme Court, First Department on March 24, 1933, a certified copy of which order was filed in the office of the Clerk 1083
of New York County on March 29, 1933, unanimously affirming the final decree of the Supreme Court, New York County, dated May 7, 1932, and entered and filed in the office of the Clerk of New York County on the 12th day of May, 1932, and from each and every part of said order, and please take

Further notice that Central Hanover Bank and Trust Company, as trustee as aforesaid, will bring up for review on said appeal the intermediate order of the Appellate Division of the Supreme Court, First Department, dated May 9, 1930, and entered in the office of the Clerk of

1084 *Notice of Appeal of Central Hanover Bank and Trust Co.*

the Appellate Division of the Supreme Court, First Department on the 3rd day of June, 1930, a certified copy of which was entered in the office of the Clerk of New York County on the 26th day of June, 1930.

Dated, May 22nd, 1933.

Davies, Auerbach & Cornell, Attorneys for Central Hanover Bank and Trust Company, as
1085 trustee, Office and Post Office Address, One Wall Street, Borough of Manhattan, City of New York.

To: Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Claimant Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, City of New York. Charles Franklin, Esq., Attorney for Claimant Manhattan Railway Company, 165 Broadway, Borough of Manhattan, City of New York. Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for
1086 the City of New York, Municipal Building, Borough of Manhattan, New York City, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, 55 Liberty Street, Borough of Manhattan, City of New York. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, 511 Fifth Avenue, Borough of Manhattan, City of New York. Shearman & Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, 65 Wall Street, Borough of Manhattan, City of New York. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., 57 William Street, Borough of Manhattan, City

*Notice of Appeal of Bowman Biltmore Hotels Corp., et al.* 1087

of New York. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, 52 William Street, Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., 15 Broad Street, Borough of Manhattan, City of New York. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for The Manhattan Railway Company, 100 Broadway, Borough of Manhattan, City of New York. 1088

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## Notice of Appeal of Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), *et al.*, to Court of Appeals

New York Supreme Court, New York County.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances. 1089

*Notice of Appeal of Bowman Biltmore Hotels Corp., et al.*

Sirs: Please take notice that Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore); Bates-Bowman Corporation (Murray Hill Hotel); One Twenty Park Avenue Realty Corporation; Corn Exchange Bank; The Bowery Savings Bank; Lincoln Forty Second Street Corporation; Carbide & Carbon Realty Co., Inc.; Vanderbilt Avenue Building Corporation; D. A. Schulte, Inc.; John Curry Real Estate, Inc.; J. Chr. G. Hupfel Co., Inc.; Rogers Peet Company; Princeton Club of New York; News Syndicate Co., Inc.; F. & S. Rockaway Restaurant, Inc.; Tishman Realty and Construction Co., Inc.; The Oceanic Investing Corporation; Borden Realty Corporation; R-W Realty Company, Inc.; Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, Deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Anahma Realty Corporation and William Volk; pursuant to leave granted in an order of the Appellate Division of the Supreme Court, First Judicial Department, dated April 21, 1933, and filed and entered in the office of the Clerk of said Court on the 1st day of May, 1933, hereby appeal to the Court of Appeals of the State of New York from the final order of said Appellate Division dated March 24, 1933, and filed and entered in the office of the Clerk of said Court on the same day and a certified copy of which was filed and entered in the office of the Clerk of the County of New York on March 29, 1933, which unanimously affirms the supplemental and amended final decree of the Supreme Court, New York County, dated May 7, 1932, and filed and entered in the office of the Clerk of the County of New York,

*Notice of Appeal of Bowman Biltmore Hotels Corp., et al.* 1093

May 12, 1932, wherein and whereby there was awarded to Manhattan Railway Company for Damage No. 1 the sum of $932,125.38, made up of the principal sum of $619,352.41, and $312,772.97 interest from the date of the vesting of title to the property taken to the date of the final decree; and each of them appeals from the whole and every part of the said order of affirmance.

And further take notice, that upon their said 1094
appeal from the said final order of affirmance of the said Appellate Division dated March 24, 1933, said parties above specified will bring up for review the intermediate order of the said Appellate Division and the whole and every part thereof, dated May 9, 1930, and filed and entered in the office of the clerk of said Court on June 3, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on June 26, 1930, which reversed, vacated and set aside the final decree of the Supreme Court, New York County, herein, dated 1095
February 28, 1928, and entered and filed in the office of the Clerk of the County of New York on March 14, 1928, and remitted the said final decree and the proceeding herein to the Supreme Court, New York County, without a jury, particularly that part of the said intermediate order which reads, "Ordered, That the said Final Decree and the within proceeding be and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award for Damage No. 1 in the above entitled proceeding in accordance with the opinion of this Court and to make the assessment

1096 for benefit in the above entitled proceeding in accordance with law," and which directs the Supreme Court, New York County, to include in the award for Damage No. 1 a sum as and for the value of rights of the railroad to impair light, air and access appurtenant to property abutting upon East 42nd Street.

Dated, New York, May 22nd, 1933.

1097 Yours, etc., Page & Page, Attorneys for above named Parties Appellants, Office & P. O. Address, 55 Liberty St., Borough of Manhattan, New York City.

To: Daniel E. Finn, Esq., Clerk of the County of New York. Hon. Arthur J. W. Hilly, Corporation Counsel, Attorney for The City of New York, Municipal Building, Borough of Manhattan, City of New York. Charles Franklin, Esq., Attorney for Manhattan Railway Co., 165 Broadway, Borough of Manhattan, City of New York.

1098 Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Co., 165 Broadway, Borough of Manhattan, City of New York. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank & Trust Company, Inc., 1 Wall St., Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., 15 Broad Street, Borough of Manhattan, City of New York. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, 100 Broadway, Borough of Manhattan, City of New York.

## Notice of Appeal of Pershing Square Building Corporation to Court of Appeals 1099

New York Supreme Court, New York County.

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In the Matter of the application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsover owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances. 1100

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Sirs: Please take notice that Pershing Square Building Corporation, pursuant to leave granted in an order of the Appellate Division of the Supreme Court, First Judicial Department, dated April 21, 1933 and filed and entered in the office of the Clerk of said Court on the 1st day of May, 1933, hereby appeals to the Court of Appeals of the State of New York from the final order of said Appellate Division dated March 24, 1933 and filed and entered in the office of the Clerk of said Court on the same day and a certified copy of which was filed and entered in the office of the Clerk of the County of New York on March 29, 1933, which unanimously affirms the supplemental and amended final decree of the Supreme 1101

1102 *Notice of Appeal of Pershing Square Building Corp.*

Court, New York County, dated May 7, 1932 and filed and entered in the office of the Clerk of the County of New York, May 12, 1932, wherein and whereby there was awarded to the Manhattan Railway Company for Damage No. 1 the sum of $932,125.38, made up of the principal sum of $619,352.41 and $312,772.97 interest from the date of the vesting of title to the property taken to the date of the final decree; and Pershing Square
1103 Building Corporation appeals from the whole and every part of the said order of affirmance.

And further take notice, that upon its said appeal from the said final order of affirmance of the said Appellate Division dated March 24, 1933, Pershing Square Building Corporation will bring up for review the intermediate order of the said Appellate Division and the whole and every part thereof, dated May 9, 1930 and filed and entered in the office of the clerk of said Court on June 3, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County
1104 of New York on June 26, 1930, which reversed, vacated and set aside the final decree of the Supreme Court, New York County, herein, dated February 28, 1928, and entered and filed in the office of the Clerk of the County of New York on March 14, 1928, and remitted the said final decree and the proceeding herein to the Supreme Court, New York County, without a jury, particularly that part of the said intermediate order which reads, "Ordered, That the said Final Decree and the within proceeding be and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award for Damage No. 1 in the above

entitled proceeding in accordance with the opinion of this Court and to make the assessment for benefit in the above entitled proceeding in accordance with law," and which directs the Supreme Court, New York County, to include in the award for Damage No. 1 a sum as and for the value of rights of the railroad to impair light, air and access appurtenant to property abutting upon East 42nd Street.

Dated, New York, May 22, 1933.

Yours, etc., Edmund W. Van Voorhis, Attorney for Pershing Square Building Corporation, Appellant, Office and P. O. Address, 511 Fifth Avenue, Borough of Manhattan, New York City.

To: Daniel E. Finn, Esq., Clerk of the County of New York. Charles Franklin, Esq., Attorney for Manhattan Railway Company, 165 Broadway, Borough of Manhattan, City of New York. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, City of New York. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank & Trust Company, etc., One Wall Street, Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., 15 Broad Street, Borough of Manhattan, City of New York. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, 100 Broadway, Borough of Manhattan, City of New York. Arthur J. W. Hilly, Esq., Corporation Counsel of The City of New York, Municipal Building, Borough of Manhattan, City of New York.

1108 **Notice of Appeal of Robert W. Goelet, *et al.*, to Court of Appeals**

Supreme Court, New York County.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever
1109 owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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1110 Take notice that Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation, pursuant to leave granted in an order of the Appellate Division of the Supreme Court, First Judicial Department, dated April 21, 1933 and filed and entered in the office of the Clerk of said Court on May 1, 1933, hereby appeals to the Court of Appeals of the State of New York, from the final order of said Appellate Division, dated March 24, 1933, and filed and entered in the office of the Clerk of said Court

on the same day, and a certified copy of which was filed and entered in the office of the Clerk of New York County, on March 29, 1933, which unanimously affirms, the supplemental and amended final decree of the Supreme Court, New York County, dated May 7, 1932, and filed and entered in the office of the Clerk of the County of New York, on May 12, 1932 and Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation appeals from the whole and every part of the said order of affirmance. 1112

And take notice further that upon the said appeal from the said final order of affirmance of the said Appellate Division, dated March 24, 1933, Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation will bring up for review the intermediate order of the said Appellate Division and the whole and every part thereof, dated May 9, 1930, and filed and entered in the office of the Clerk of said Court on June 3, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York, on June 26, 1930, which reversed, vacated and set aside the final decree of the Supreme Court, New York County, herein, dated February 28, 1928, and entered and filed in the office of the Clerk of New York County, on March 14, 1928. 1113

Dated, New York, May 20, 1933.

Yours, etc., Shearman & Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street

Corporation, The National City Bank of New York and The National City Realty Corporation, 55 Wall Street, New York City.

To: Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Municipal Building, Borough of Manhattan, New York, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, No. 55 Liberty Street, Borough of Manhattan, New York, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, No. 511 Fifth Avenue, Borough of Manhattan, New York, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., No. 57 William Street, Borough of Manhattan, New York, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, No. 52 William Street, Borough of Manhattan, New York, N. Y. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, New York, N. Y. Charles Franklin, Esq., Attorney for The Manhattan Railway Company, 165 Broadway, Borough of Manhattan, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, etc., No. 1 Wall Street, Borough of Manhattan, New York, N. Y. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for The Manhattan Railway Company, No. 100 Broadway, Borough of Manhattan, New York, N. Y. Daniel E. Finn, County Clerk of New York County. George Welwood Murray, Esqs., At-

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torney for Chase National Bank of the City of New York, etc., 15 Broad Street, Borough of Manhattan, City of New York.

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## Notice of Appeal of Manhattan Storage & Warehouse Co. to Court of Appeals

New York Supreme Court, New York County.

1118

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In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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Sirs: Please take notice that The Manhattan Storage and Warehouse Company, pursuant to leave granted in an order of the Appellate Division of the Supreme Court, First Judicial Department, dated April 21, 1933 and filed and entered in the office of the Clerk of said Court on the 1st day of May, 1933, hereby appeals to

the Court of Appeals of the State of New York from the final order of said Appellate Division dated March 24, 1933 and filed and entered in the office of the Clerk of said Court on the same day and a certified copy of which was filed and entered in the office of the Clerk of the County of New York on March 29, 1933, which unanimously affirms the supplemental and amended final decree of the Supreme Court, New York County dated May 7, 1932 and filed and entered in the office of the Clerk of the County of New York, May 12, 1932, wherein and whereby there was awarded to Manhattan Railway Company for Damage No. 1 the sum of $932,125.38, made up of the principal sum of $619,352.41, and $312,772.97 interest from the date of the vesting of title to the property taken to the date of the final decree; and The Manhattan Storage and Warehouse Company appeals from the whole and every part of the said order of affirmance.

And further take notice, that upon its said appeal from the said final order of affirmance of the said Appellate Division dated March 24, 1933, The Manhattan Storage and Warehouse Company will bring up for review the intermediate order of the said Appellate Division and the whole and every part thereof, dated May 9, 1930 and filed and entered in the office of the clerk of said Court on June 3, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on June 26, 1930, which reversed, vacated and set aside the final decree of the Supreme Court, New York County, herein, dated February 28, 1928, and entered and filed in the office of the Clerk of the

*Notice of Appeal of Manhattan Storage & Warehouse Co.* 1123

County of New York on March 14, 1928, and remitted the said final decree and the proceeding herein to the Supreme Court, New York County, without a jury, particularly that part of the said intermediate order which reads, "ordered, That the said Final Decree and the within proceeding be and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award for Damage No. 1 in the above entitled proceeding in accordance with the opinion of this Court and to 1124
make the assessment for benefit in the above entitled proceeding in accordance with law," and which directs the Supreme Court, New York County, to include in the award for Damage No. 1 a sum as and for the value of rights of the railroad to impair light, air and access appurtenant to property abutting upon East 42nd Street.

Dated, New York, May 22, 1933.

Yours, etc., Middlebrook & Sincerbeaux, Attorneys for The Manhattan Storage & Ware- 1125
house Company, Office and P. O. Address, 57 William Street, Borough of Manhattan, City of New York.

To: Daniel E. Finn, Esq., Clerk of the County of New York. Arthur J. W. Hilly, Corporation Counsel, Municipal Building, Borough of Manhattan, City of New York. Charles Franklin, Esq., Attorney for Manhattan Railway Company, 165 Broadway, Borough of Manhattan, City of New York. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, City of New York. Davies, Auer-

1126 bach & Cornell, Esqs., Attorneys for Central Hanover Bank & Trust Company, etc., 1 Wall Street, Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., 15 Broad Street, Borough of Manhattan, City of New York. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, 100 Broadway, Borough of Manhattan, City of
1127 New York.

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## Notice of Appeal of Cooper Union for Advancement of Science and Art to Court of Appeals

New York Supreme Court, New York County.

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In the Matter of the Application of the City
1128 of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

*Notice of Appeal of Cooper Union for Advancement of Science and Art* 1129

Sirs: Please take notice, that Cooper Union For The Advancement of Science and Art, pursuant to leave granted in an order of the Appellate Division of the Supreme Court, First Judicial Department, dated April 21, 1933 and filed and entered in the office of the Clerk of said Court on the first day of May, 1933, hereby appeals to the Court of Appeals of the State of New York from the final order of said Appellate Division dated March 24, 1933 and filed and entered in the office of the Clerk of said Court on 1130
the same day, a certified copy of which order was filed and entered in the office of the Clerk of the County of New York on March 29, 1933, which order unanimously affirms the supplemental and amended final decree of the Supreme Court, New York County, dated May 7, 1932 and filed and entered in the office of the Clerk of the County of New York on May 12, 1932; and said Cooper Union For the Advancement of Science and Art appeals from the whole and every part of said order of affirmance.

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And further take notice, that upon its said appeal said Cooper Union For the Advancement of Science and Art will bring up for review the intermediate order of the said Appellate Division and the whole and every part thereof, dated May 9, 1930 and filed and entered in the office of the Clerk of said Court on June 3, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on June 26, 1930, which reversed, vacated and set aside the final decree of the Supreme Court, New York County herein dated February 28, 1928, and entered and filed in the office of

the Clerk of the County of New York on March 14, 1928 and remitted the said final decree and the proceeding herein to the Supreme Court, New York County, and particularly that part of the said intermediate order which reads "Ordered, That the said Final Decree and the within proceeding be and the same hereby is remitted to the Supreme Court, New York County, without a jury, with directions to make the award for Damage No. 1 in the above entitled proceedings in accordance with the opinion of this Court and to make the assessment for benefit in the above entitled proceeding in accordance with law," and which directs the Supreme Court, New York County, to include in the award for Damage No. 1 a sum as and for the value of rights of the railroad to impair light, air and access appurtenant to property abutting upon East 42nd Street.

Dated May 22, 1933.

Yours, etc., Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art, Office & P. O. Address, No. 52 William Street, Borough of Manhattan, The City of New York, N. Y.

To: Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for The City of New York. Daniel E. Finn, Esq., Clerk of the County of New York. Charles Franklin Esq., Attorney for Manhattan Railway Company, 165 Broadway, New York City. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, 165 Broadway, New York

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City. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank & Trust Company, etc., 1 Wall Street, New York City. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., 15 Broad Street, New York City. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, 100 Broadway, New York City.

1136

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## Notice of Appeal of Interborough Rapid Transit Company to Court of Appeals

Supreme Court, First Judicial District, County of New York.

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In the Matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

1137

1138 *Notice of Appeal of Interborough Rapid Transit Co.*

Please take notice that the claimant Interborough Rapid Transit Company hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court for the First Department entered in the office of the Clerk of said Appellate Division on the 24th day of March, 1933, a certified copy of which order was filed in the office of the Clerk of New York County on the 29th day of March, 1933, which
1139 order affirmed the final decree of the Supreme Court, New York County, entered and filed in the office of the Clerk of New York County on the 12th day of May, 1932.

And appellant Interborough Rapid Transit Company intends to bring up for review upon such appeal the intermediate order dated May 9, 1930, entered herein in the office of the Clerk of the Appellate Division of the Supreme Court on the 3rd day of June, 1930, a certified copy of which was entered and filed in the office of the Clerk of the County of New York on the
1140 26th day of June, 1930, which order reversed the final decree of the Supreme Court dated February 28, 1928, entered and filed in the office of the Clerk of the County of New York on March 14, 1928, and said appellant appeals from each and every part of said order as well as from the whole thereof.

Dated, New York, May 19, 1933.

Yours, &c., Hornblower, Miller, Miller & Boston, Attorneys for Appellant Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, New York City.

*Notice of Appeal of Interborough Rapid Transit Co.* 1141

To: Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Municipal Building, Borough of Manhattan, New York City, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, No. 55 Liberty Street, Borough of Manhattan, New York City, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, No. 511 Fifth Avenue, Borough of Manhattan, New York City, N. Y. Shearman & 1142
Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, No. 65 Wall Street, Borough of Manhattan, New York City, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co. No. 57 William Street, Borough of Manhattan, New York City, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, No. 52 William Street, New York City, N. Y. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., No. 15 Broad Street, Borough of Manhattan, New York City, N. Y. 1143
Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, No. 1 Wall Street, Borough of Manhattan, New York City, N. Y. Hughes, Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for Manhattan Railway Company, No. 100 Broadway, Borough of Manhattan, New York City, N. Y. Charles Franklin, Esq., Attorney for Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City, N. Y., and Daniel E. Finn, Esq., Clerk of New York County.

1144

## Notice of Appeal of William Roberts, Receiver of Manhattan Railway Company, to Court of Appeals

Supreme Court of the State of New York, County of New York.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations,
1145 platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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1146

Sirs: Please take notice that William Roberts, Receiver of claimant Manhattan Railway Company, hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court for the First Judicial Department entered and filed in the Office of the Clerk of said Court on the 24th day of March, 1933, a certified copy of which order was filed in the Office of the Clerk of the County of New York on the 29th day of March, 1933, affirming a Final Decree of the Su-

 1147

preme Court, New York County, herein, dated May 7, 1932, and entered and filed in the Office of the Clerk of the County of New York on the 12th day of May 1932, which makes and contains an award of $619,352.41 principal and $312,772.97 interest to Manhattan Railway Company for Damage No. 1, and said William Roberts, Receiver of claimant Manhattan Railway Company, appeals from each and every part of said order as well as from the whole thereof.

1148

Please also take notice that the said William Roberts, Receiver of Manhattan Railway Company, will bring up for review upon the appeal from said order, the intermediate order of the Appellate Division of the Supreme Court for the First Judicial Department dated May 9, 1930 and entered in the Office of the Clerk of said Court on the 3rd day of June, 1930, a certified copy of which order was filed in the Office of the Clerk of the County of New York on the 26th day of June, 1930, reversing, vacating and setting aside that part of a Final Decree of the Supreme Court, New York County, dated February 28, 1928, and entered and filed in the Office of the Clerk of the County of New York on March 14, 1928, which made and contained an award of $975,438 principal and $247,273.53 interest to the Manhattan Railway Company for Damage No. 1.

1149

Dated, New York, May 22, 1933.

Yours, etc., Hughes, Schurman & Dwight, Attorneys for William Roberts, Receiver of Manhattan Railway Company, Claimant-Appellant,

1150 *Notice of Appeal of William Roberts, Receiver of Manhattan Railway Co.*

Office and P. O. Address, 100 Broadway, Borough of Manhattan, New York City.

To: Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Appellant-Respondent, Municipal Building, Borough of Manhattan, New York City, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, *et al.*, Appellants-Respondents, 55 Liberty Street, Borough of Manhattan,
1151 New York City, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, Appellant-Respondent, 511 Fifth Avenue, Borough of Manhattan, New York City, N. Y. Shearman & Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, Appellants-Respondents, 55 Wall Street, Borough of Manhattan, New York City, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., Appellant-Respondent, 57 William Street, Borough of Manhattan, New York City, N. Y. Parsons, Closson & Mc-
1152 Ilvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, Appellant-Respondent, 52 William Street, Borough of Manhattan, New York City, N. Y. Hornblower, Miller, Miller & Boston, Eqs., Attorneys for Claimant-Appellant, Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, New York City, N. Y. Charles Franklin, Esq., Attorney for Claimant-Appellant, Manhattan Railway Company, 165 Broadway, Borough of Manhattan, New York City, N. Y. George Welwood Murray, Esq., Attorney for Chase National Bank of the City of New York, etc., Appellant-Respondent, 15 Broad Street, Borough of Manhattan, New York City, N. Y.

Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, etc., Appellant-Respondent, 1 Wall Street, Borough of Manhattan, New York City, N. Y. and Daniel E. Finn, Esq., Clerk of New York County.

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## Notice of Appeal of Chase National Bank of the City of New York to Court of Appeals

Supreme Court, New York County. 1154

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances. 1155

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Sirs: Please take notice that The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under a Deed of Trust of the Manhattan Railway Com-

1156 *Notice of Appeal of Chase National Bank*

pany dated June 1, 1913, and a claimant-objector herein, hereby appeals to the Court of Appeals from the Order of the Appellate Division of the Supreme Court, First Department, entered in the Office of the Clerk of that Court on the 24th day of March, 1933 (a certified copy of which was filed in the Office of the Clerk of the County of New York on the 29th day of March, 1933) unanimously affirming the supplemental and amended final decree of the Supreme Court, New
1157 York County, dated May 7, 1932, and entered in the Office of the Clerk of the County of New York on the 12th day of May, 1932, and said The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee, etc., hereby appeals from each and every part of said order of affirmance, as well as from the whole thereof.

Please take further notice that said The Chase National Bank of the City of New York, successor by merger and consolidation to The
1158 Equitable Trust Company of New York, as Trustee, etc., will bring up for review on said appeal the intermediate order of the Appellate Division of the Supreme Court, First Department, dated May 9, 1930, and entered in the Office of the Clerk of that Court on the 3rd day of June, 1930 (a certified copy of which was filed in the Office of the Clerk of the County of New York on the 26th day of June, 1930), reversing, vacating and setting aside the final decree of the Supreme Court, New York County, entered in the Office of the Clerk of the County of New York on the 14th day of March, 1928, and remitting the said

final decree and the proceeding to the Supreme Court with directions to make award for damage No. 1 in accordance with the opinion of the Appellate Division, First Department, and will also bring up for review on said appeal the said decree of the Supreme Court, New York County, entered in the Office of the Clerk of the County of New York on the 14th day of March, 1928.

Dated, New York, N. Y., May 19, 1933.

Yours &c., George Welwood Murray, Attorney 1160
for Claimant-Objector, The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under Deed of Trust, etc., 15 Broad Street, Borough of Manhattan, New York, N. Y.

To: The Clerk of the County of New York. Arthur J. W. Hilly, Esq., Corporation Counsel, Attorney for the City of New York, Municipal Building, Borough of Manhattan, New York, N. Y. Page & Page, Esqs., Attorneys for Bow- 1161
man Biltmore Hotels Corporation, *et al.*, No. 55 Liberty Street, Borough of Manhattan, New York, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, No. 511 Fifth Avenue, Borough of Manhattan, New York, N. Y. Shearman & Sterling, Esqs., Attorneys for Robert Walton Goelet, *et al.*, No. 55 Wall Street, Borough of Manhattan, New York, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for The Manhattan Storage and Warehouse Co., No. 57 William Street, Borough of Manhattan, New York, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art,

1162 *Final Order of Appellate Div. Appealed From*

No. 52 William Street, Borough of Manhattan, New York, N. Y. Hornblower, Miller, Miller & Boston, Esqs., Attorneys for Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, New York, N. Y. Charles Franklin, Esq., Attorney for The Manhattan Railway Company, 165 Broadway, Borough of Manhattan, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Hanover Bank and Trust Company, etc., No. 1 Wall Street, Borough of Manhattan, New York, N. Y. Hughes,
1163 Schurman & Dwight, Esqs., Attorneys for William Roberts, Receiver for The Manhattan Railway Company, No. 100 Broadway, Borough of Manhattan, New York, N. Y.

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## Final Order of Appellate Division Appealed From

At a term of the Appellate Division of the Supreme Court held in and for the First Judi-
1164 cial Department in the County of New York, on the 24th day of March 1933.

Present—Hon. Edward R. Finch Presiding Justice, Hon. Edgar S. K. Merrell, Hon. Henry L. Sherman, Hon. Alfred H. Townley, Justices.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever

*Final Order of Appellate Div. Appealed From* 1165

owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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1166

An appeal having been taken to this Court by The City of New York from that part of the Final Decree of the Supreme Court, New York County, entered on the 12th day of May, 1932, which makes and contains an award of $619,352.41 principal and $312,772.97 interest to the Manhattan Railway Company for Damage Number 1 as shown by the said Final Decree and by the damage maps attached or annexed thereto; and by the Interborough Rapid Transit Company, claimant, Manhattan Railway Company, as owner and lessor of the property taken in condemnation, The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee etc. and an objector, Central Hanover Bank & Trust Company (formerly Central Union Trust Company); Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), Bates-Bowman Corporation (Murray Hill Hotel), One Twenty Park Avenue Realty Corporation, Corn Exchange Bank, The Bowery Savings Bank, Lincoln Forty Second Street Corporation, Carbide & Carbon Realty Co., Inc.,

1167

1168 *Final Order of Appellate Div. Appealed From*

Vanderbilt Avenue Building Corporation, D. A. Schulte, Inc., John Curry Real Estate, Inc., J. Chr. G. Hupfel Co. Inc., Rogers Peet Company, Princeton Club of New York, News Syndicate Co., Inc., F. & S. Rockaway Restaurant, Inc., Tishman Realty and Construction Co. Inc., The Oceanic Investing Corporation, Borden Realty Corporation, R-W Realty Company, Inc., Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cud-
1169 more, Anahma Realty Corporation, and William Volk, objectors and as owners or lessees of property assessed for benefit; Pershing Square Building Corporation, objector and as owner of property assessed for benefit; Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation, objectors and as owners or lessees of property assessed for benefit; The Manhattan Storage and Warehouse Company, objector and as owner of property assessed for benefit; and Cooper Union for the
1170 Advancement of Science and Art from each and every part of said Final Decree,

And said appeal having been argued by Mr. John Lehman of counsel for The City of New York, by Mr. J. Osgood Nichols of counsel for the Interborough Rapid Transit Company, by Mr. Charles Franklin of counsel for Manhattan Railway Company, by Mr. Charles E. Hughes, Jr., of counsel for William Roberts, as Receiver of Manhattan Railway Company, by Mr. George Welwood Murray, of counsel for The Chase National Bank of the City of New York (succes-

sor by merger to The Equitable Trust Company of New York), Trustee under the Second Mortgage of The Manhattan Railway Company, by Mr. H. C. McCollom of counsel for Central Hanover Bank and Trust Company, as Trustee under consolidated mortgage of Manhattan Railway Company, by Mr. William H. Page of counsel for Bowman Biltmore Hotels Corporation, Bowery Savings Bank, Corn Exchange Bank and 22 other property owners within the area of assessment, by Mr. Herbert H. Maass of counsel for Pershing Square Building Corporation, by Mr. Philip A. Carroll of counsel for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York, National City Realty Corporation; by Mr. Thomas H. Baskerville of counsel for The Manhattan Storage & Warehouse Company; and by Mr. Albert S. Wright of counsel for Cooper Union for the Advancement of Science and Art; and due deliberation having been had thereon, 1172

It is hereby unanimously ordered and adjudged that the final decree so appealed from be and the same is hereby affirmed, without costs. 1173

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## Order Allowing William Roberts, Receiver of Manhattan Railway Company, to Intervene

At a Special Term Part I of the Supreme Court of the State of New York, held in and for the county of New York, at the County Court House in the Borough of Manhattan, City of New York on the 21st day of December, 1932.

Present—Hon. Ernest L. Hammer, Justice.

1174 *Order Allowing William Roberts, Receiver of Manhattan Railway Co., to Intervene*

In the Matter of theApplication of the City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of
1175 said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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A motion having been made by William Roberts, Receiver of Manhattan Railway Company, for an order substituting William Roberts, Receiver of Manhattan Railway Company, as a party in the above entitled proceeding in the
1176 place and stead of Manhattan Railway Company and for an order substituting Messrs. Hughes, Schurman & Dwight his attorneys as such receiver, as his attorneys in this proceeding in the place and stead of Charles Franklin, Esq., attorney of record of Manhattan Railway Company in the above entitled proceeding, and the said motion having duly come on to be heard,

Now upon reading and filing the order to show cause herein, dated December 17, 1932, the affidavit of William Roberts, sworn to the 17th day of December, 1932, Exhibit annexed and proof of service thereof, read in support of the said mo-

tion and the affidavit of Charles G. Mullin, sworn to the 19th day of December, 1932, and the affidavit of John Lehman, sworn to the 19th day of December, 1932, read in opposition thereto, and after hearing Hughes, Schurman & Dwight, attorneys for William Roberts, Receiver of Manhattan Railway Company, in support of the said motion and Charles Franklin, Esq., attorney for Manhattan Railway Company, and Arthur J. W. Hilly, Corporation Counsel, John Lehman, of counsel, attorney for the City of New York, who 1178 did not object to said motion in so far as it seeks an order permitting William Roberts, as Receiver of Manhattan Railway Company, to become a party to the above entitled proceeding, and due deliberation having been had thereon,

Now on motion of Hughes, Schurman & Dwight, attorneys for William Roberts, Receiver of Manhattan Railway Company, upon filing the opinion of the court, it is

Ordered that William Roberts, Receiver of Manhattan Railway Company be and he hereby is 1179 permitted to intervene and he hereby is made a party of record in the above entitled proceeding; and it is further

Ordered that the said motion be and the same hereby is denied in all other respects; and it is further

Ordered that hereafter copies of all papers herein be served upon Messrs. Hughes, Schurman & Dwight, his attorneys, at their office No. 100 Broadway, in the Borough of Manhattan, City of New York.

Enter,

E. L. H.,
J. S. C.

1180

## Order Granting Leave to Appeal to Court of Appeals to Interborough Rapid Transit Company and Manhattan Railway Company

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on the 21st day of April, 1933.

Present—Hon. Edward R. Finch, Presiding
1181 Justice, Hon. Edgar S. K. Merrell, Hon. Henry L. Sherman, Hon. Alfred H. Townley, Justices.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire
1182 the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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On reading and filing the notice of motion of claimants Interborough Rapid Transit Company and Manhattan Railway Company for leave to

*Order Granting Leave to Appeal to Interborough Rapid Transit Co. and Manhattan Railway Co.*

1183

appeal to the Court of Appeals from the order of this Court entered herein on the 24th day of March, 1933, and to bring up for review on said appeal the intermediate order of this Court dated May 9, 1930, and on reading and filing the affidavit of J. Osgood Nichols, verified the 6th day of April, 1933; and said motion having been submitted by Hornblower, Miller, Miller & Boston on behalf of claimant Interborough Rapid Transit Company and Charles Franklin on behalf of claimant Manhattan Railway Company; and it appearing to the Court that questions of law are involved which ought to be reviewed by the Court of Appeals.

1184

Now, on motion of Hornblower, Miller, Miller & Boston, attorneys for claimant Interborough Rapid Transit Company, and Charles Franklin, attorney for claimant Manhattan Railway Company, it is

Certified that questions of law are involved which in the opinion of this Court ought to be reviewed by the Court of Appeals, and it is hereby

1185

Ordered That said motion be and the same hereby is granted and that the above named claimants Interborough Rapid Transit Company and Manhattan Railway Company have leave to appeal to the Court of Appeals from the order of this Court entered herein on the 24th day of March, 1933, and bring up for review on said appeal the intermediate order of this Court dated May 9, 1930, and entered in the office of the Clerk of this Court on the 3rd day

1186 *Order Granting Leave to Appeal to William Roberts, Receiver of Manhattan Railway Co.*

of June, 1930, a certified copy of which was entered in the office of the Clerk of the County of New York on the 26th day of June, 1930.

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**Order Granting Leave to Appeal to Court of Appeals to William Roberts, Receiver for Manhattan Railway Company**

1187 At a term of the Appellate Division of the Supreme Court of the State of New York, held in and for the First Judicial Department on the 21st day of April, 1933.

Present—Hon. Edward R. Finch, Presiding Justice, Hon. Edgar S. K. Merrell, Hon. Henry L. Sherman, Hon. Alfred H. Townley, Justices.

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1188 In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

*Order Granting Leave to Appeal to William Roberts, Receiver of Manhattan Railway Co.* 1189

On reading and filing the notice of motion of William Roberts, Receiver for claimant Manhattan Railway Company, dated April 8, 1933, for an order granting leave to appeal to the Court of Appeals from the order of this Court entered herein on the 24th day of March, 1933, affirming the final decree, dated May 7, 1932, and entered and filed in the office of the Clerk of New York County on May 12, 1932, and to bring up for review on said appeal the intermediate order of this Court dated May 9, 1930, 1190 and on reading and filing the affidavit of Charles E. Hughes, Jr., verified the 8th day of April, 1933, and said motion having been submitted by Hughes, Schurman & Dwight on behalf of William Roberts, Receiver for claimant Manhattan Railway Company, and it appearing to the Court that questions of law are involved which ought to be reviewed by the Court of Appeals,

Now, on motion of Hughes, Schurman & Dwight, attorneys for William Roberts, Receiver for claimant Manhattan Railway Company, it is 1191

Certified that questions of law are involved which in the opinion of this Court ought to be reviewed by the Court of Appeals, and it is hereby

Ordered that said motion be and the same hereby is granted and that the above named William Roberts, Receiver for claimant Manhattan Railway Company, have leave to appeal to the Court of Appeals from the said order of this Court entered herein on the 24th day of March, 1933, and bring up for review on said appeal the

1192 *Order Granting Leave to Appeal to Chase National Bank*

intermediate order of this Court dated May 9, 1930, and entered in the office of the Clerk of this Court on the 3rd day of June, 1930, a certified copy of which was entered in the office of the Clerk of the County of New York on the 26th day of June, 1930.

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## Order Granting Leave to Appeal to Court of Appeals to The Chase National Bank of the City of New York

1193

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on the 21st day of April, 1933.

Present—Hon. Edward R. Finch, Presiding Justice, Hon. Edgar S. K. Merrell, Hon. Henry L. Sherman, Hon. Alfred H. Townley, Justices.

1194

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said ele-

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vated railroad structures, tracks, stations, platforms, stairways and appurtenances.

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A motion having been made by The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under Deed of Trust of the Manhattan Railway Company dated June 1, 1913, for leave to appeal to 1196
the Court of Appeals from the order of this Court entered herein on the 24th day of March, 1933, unanimously affirming the final decree herein dated May 7, 1932 and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932, and to bring up for review on said appeal the intermediate order of this Court dated May 9, 1930, and certifying that in the opinion of this Court questions of law are involved which ought to be reviewed by the Court of Appeals, and said motion having been duly submitted by George Welwood Murray, at- 1197
torney for said claimant-appellant; now upon reading and filing the notice of motion of said claimant-appellant, The Chase National Bank of the City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee, etc., dated April 7, 1933, and the affidavit of William Dean Embree, sworn to April 7, 1933, annexed thereto, with proof of service thereof, in support of said motion, and due deliberation having been had, and it appearing to the Court that questions of law are involved which ought to be reviewed by the Court of Appeals, on motion of George Wel-

1198 *Order Granting Leave to Appeal to Central Hanover Bank and Trust Co.*

wood Murray, attorney for said claimant-appellant, it is

Certified that questions of law are involved herein which ought to be reviewed by the Court of Appeals, and it is

Ordered that the said motion be and the same hereby is granted, and the above-named claimant-appellant, The Chase National Bank of the
1199 City of New York, successor by merger and consolidation to The Equitable Trust Company of New York, as Trustee under Deed of Trust of the Manhattan Railway Company dated June 1, 1913, have leave to appeal to the Court of Appeals from the order of this Court entered herein on the 24th day of March, 1933, unaimously affirming the final decree herein dated May 7, 1932 and entered in the office of the Clerk of the County of New York on the 12th day of May, 1932, and to bring up for review on said appeal the intermediate order of this Court dated May
1200 9, 1930 and entered in the office of the Clerk of this Court on June 3, 1930, a certified copy of which was entered in the office of the County of New York on the 26th day of June, 1930.

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## Order Granting Leave to Appeal to Court of Appeals to Central Hanover Bank and Trust Company

At a Term of the Appellate Division of the Supreme Court, held in and for the First Judi-

*Order Granting Leave to Appeal to Central Hanover Bank and Trust Co.* 1201

cial Department in the County of New York, on the 21st day of April, 1933.

Present—Hon. Edward R. Finch, Presiding Justice. Hon. Edgar S. K. Merrell, Hon. Henry L. Sherman, Hon. Alfred H. Townley, Justices.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances. 1202 1203

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A motion having been duly made herein by Central Hanover Bank and Trust Company, as Trustee, etc., for an order granting leave to appeal to the Court of Appeals, and said motion having duly come on to be heard on April 13th, 1933,

Now, on reading and filing the notice of motion of Central Hanover Bank and Trust Company, as Trustee under Consolidated Mortgage of Manhattan Railway Company, dated April 7, 1933, for an order granting leave to appeal to the Court of Appeals from the order of this

1204 *Order Granting Leave to Appeal to Central Hanover Bank and Trust Co.*

Court, entered herein on March 24, 1933, and to bring up for review on said appeal the intermediate order of this Court, dated May 9, 1930, the affidavit of Harold C. McCollom, verified April 7, 1933, in support thereof, and the said motion having been duly submitted by Davies, Auerbach & Cornell, attorneys for Central Hanover Bank and Trust Company, as Trustee; and it appearing to this Court that questions of law
1205 are involved which ought to be reviewed by the Court of Appeals, and due deliberation having been had thereon,

Now, on motion of Davies, Auerbach & Cornell, attorneys for Central Hanover Bank and Trust Company, it is

Certified, that questions of law are involved which, in the opinion of this Court, ought to be reviewed by the Court of Appeals; and it is hereby

1206 Ordered, that the motion be and hereby is in all respects granted, and that the Central Hanover Bank and Trust Company, as Trustee under Consolidated Mortgage of Manhattan Railway Company, have leave to appeal to the Court of Appeals from the order of this Court, entered herein on March 24, 1933, unanimously affirming the final decree, dated May 7, 1932 and entered and filed in the office of the Clerk of New York County on the 12th day of May, 1932, and to bring up for review on said appeal the intermediate order of this Court dated May 9, 1930 and entered in the office of the Clerk of this Court on the 3rd day of June, 1930, a certified

*Order Granting Leave to Appeal to City of New York and Bowman Biltmore Hotels Corporation, et al.* 1207

copy of which was entered in the office of the Clerk of the County of New York on the 26th day of June, 1930.

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**Order Granting Leave to Appeal to Court of Appeals to The City of New York and Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), *et al.*** 1208

At a Term of the Appellate Division of the Supreme Court, held in and for the First Judicial Department in the County of New York, on the 21st day of April, 1933.

Present—Hon. Edward R. Finch, Presiding Justice. Hon. Edgar S. K. Merrell, Hon. Henry L. Sherman, Hon. Alfred H. Townley, Justices.

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1209

In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

1210 *Order Granting Leave to Appeal to City of New York and Bowman Biltmore Hotels Corporation, et al.*

A motion having been made by The City of New York, Bowman Biltmore Hotels Corporation (Hotel Commodore and Hotel Biltmore), Bates-Bowman Corporation (Murray Hill Hotel), One Twenty Park Avenue Realty Corporation, Corn Exchange Bank, The Bowery Savings Bank, Lincoln Forty Second Street Corporation, Carbide & Carbon Realty Co., Inc., Vanderbilt
1211 Avenue Building Corporation, D. A. Schulte, Inc.; John Curry Real Estate, Inc., J. Chr. G. Hupfel Co., Inc., Rogers Peet Company, Princeton Club of New York, News Syndicate Co., Inc., F. & S. Rockaway Restaurant, Inc., Tishman Realty and Construction Co., Inc., The Oceanic Investing Corporation, Borden Realty Corporation, R-W Realty Company, Inc., Clara L. North and Ella Blackburn, Trustees of the Estate of James Kelley, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Anahma Realty Corporation, William Volk, Pershing Square
1212 Building Corporation, Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York, The National City Realty Corporation, The Manhattan Storage & Warehouse Company and Cooper Union for the Advancement of Science and Art, pursuant to section 588, subdivision 5 of the Civil Practice Act, for leave to appeal to the Court of Appeals from the final order of this Court entered and filed herein on the 24th day of March, 1933, a certified copy of which was filed and entered in the office of the Clerk of the County of New York on March 29, 1933, unanimously affirming the amended and supplemental final decree as to awards and assessments of the Supreme Court, New York County, dated May 7, 1932 and entered

*Order Granting Leave to Appeal to City of New York and Bowman Biltmore Hotels Corporation, et al.*

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in the office of the Clerk of the County of New York, May 12, 1932; and the motion having been duly submitted pursuant to the rules of this Court;

Now upon reading and filing the notice of motion with proof of due service thereof, and the affidavits of John Lehman, William H. Page, Thomas H. Baskerville, Ellwood Thomas, Monroe L. Friedman and Philip A. Carroll in support of said motion, and due deliberation having been had; the said motion is in all respects granted, and it hereby is certified that in the opinion of this Court questions of law are involved herein which ought to be reviewed by the Court of Appeals; and it is

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Ordered, that the said moving parties and persons and each of them be and hereby are granted leave to appeal to the Court of Appeals from the final order of this Court dated and filed herein March 24, 1933, and a certified copy of which was filed and entered in the office of the Clerk of the County of New York on March 29, 1933, unanimously affirming the amended and supplemental final decree as to awards and assessments of the Supreme Court, New York County, dated May 7, 1932 and entered in the office of the Clerk of the County of New York, May 12, 1932, and to bring up for review on said appeal the intermediate order of this Court entered in the office of the Clerk of this Court on the 3rd day of June, 1930, a certified copy of which was entered in the office of the Cerk of the County of New York on the 26th day of June, 1930.

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**Memorandum of Appellate Division Herein**

2038. Matter of City of N. Y. relative to acquiring title to the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan R'y, or by whomsoever owned, in East 42d Street, constituting the existing 42d Street Spur—Decree affirmed, without costs. No opinion. Order filed. (N. Y. Law Journal of March 25, 1933, p. 1756.)

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**Affidavit of No Opinion**

New York Supreme Court, Appellate Division, First Judicial Department.

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In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad Structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever
1218 owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattann, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

State of New York, City and County of New York, ss.:

John Lehman, being duly sworn, deposes and says:

That he is associated with the Corporation Counsel of the City of New York, as counsel for the City of New York, in the above entitled proceeding and is familiar with the same, and with the matters herein stated.

That upon the decision of the Appellate Division of the Supreme Court, First Judicial Department, upon the appeals of The City of New York; of the claimants, Interborough Rapid Transit Company, Manhattan Railway Company, The Chase National Bank of the City of New York, etc., Central Hanover Bank & Trust Company, etc.; and the following five groups of owners of property within the area of assessment and assessed in said proceeding; Bowman-Biltmore Hotels Corporation, *et al.*, Pershing Square Building Corporation, Robert Walton Goelet, *et al.*, Manhattan Storage & Warehouse Co., Cooper Union for the Advancement of Science and Art, from the supplemental and amended final decree of the Supreme Court, New York County, dated May 7, 1932 and filed and entered in the office of the Clerk of the County of New York on May 12, 1932, no opinion was handed down by the Appellate Division other than the following memorandum published in the New York Law Journal on March 25, 1933, on page 1756: 1220 1221

"2038. Matter of City of N. Y. relative to acquiring title to the elevated railroad structures,

tracks, stations, platforms, stairways and appurtenances of the Manhattan R'y, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur—Decree affirmed, without costs. No opinion. Order filed."

JOHN LEHMAN.

Sworn to before me this June 9, 1933. Max J. Walker Notary Public Bronx County Bronx Co. Clk's No. 9, Reg. No. 51W34 N. Y. Co. Clk's No.
1223 248, Reg. No. 4W100 Kings Co. Clk's No. 152, Reg. No. 424 Term Expires March 30, 1934.

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**Clerk's Certificate.**

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

I, DANIEL E. FINN, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme
1224 Court of said State, do hereby certify that the foregoing consists of certified copies of the notices of appeal to the Court of Appeals, the orders appealed from, and the papers on which the Court below acted in making said orders.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 8th day of July, 1933.

DANIEL E. FINN,
Clerk.

(Seal)

[fol. 409] STATE OF NEW YORK,
Court of Appeals,
State Reporter's Office, ss:

I, Louis J. Rezzemini, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of Matter of City of New York, Appellant and Respondent, Relative to Acquiring Title to Elevated Railroad in East 42nd Street in Borough of Manhattan (Manhattan Ry. Co. et al., Respondents and Appellants), decided by the Court of Appeals on the third day of July, 1934, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 28th day of September, 1934.

Louis J. Rezzemini, as Reporter of the Court of Appeals of the State of New York. Attest: (L. S.) Wm. J. Armstrong, Clerk of the Court of Appeals. (Seal Court of Appeals, State of New York.)

STATE OF NEW YORK,
Court of Appeals:

I, Cuthbert W. Pound, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that William J. Armstrong is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that Louis J. Rezzemini is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of Matter of City of New York, Appellant and Respondent, Relative to Acquiring Title to Elevated Railroad in East 42nd Street in Borough of Manhattan (Manhattan Ry. Co. et al., Respondents and Appellants), decided by the said Court of Appeals on the third day of July,

1934, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of William J. Armstrong, as clerk of said court, appended thereto is the true and genuine signature of said William J. Armstrong, and the signature of Louis J. Rezzemini, as reporter of said court, appended thereto is the true and genuine signature of said Louis J. Rezzemini.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on the first day of October, in the year one thousand nine hundred and thirty-four.

Cuthbert W. Pound, as Chief Judge of the Court of Appeals of the State of New York.

[fol. 410] Matter of the Application of The City of New York Relative to Acquiring Title to the Elevated Railroad Structures in Forty-second Street

(Decided July 3, 1934)

Appeal from an Order of Appellate Division Affirming Order of Supreme Court, New York County

Paul Windels, Corporation Counsel (Paxton Blair of counsel), for City of New York, appellant and respondent.

Charles E. Hughes, Jr., Martin A. Schenck, J. Osgood Nichols, William H. Page, Ellwood Thomas, Charles Franklin and Wilber Stammler for respondents and appellants.

POUND, Ch. J.:

The Forty-second street spur of the Third Avenue Elevated Railroad, extending from Third avenue to the Grand Central Railway Station, has been taken down by compulsion of law. Protracted litigation has ensued over the amount of money the company should receive for such taking. The mandatory law is chapter 611 of the Laws of 1919, as amended by chapter 635 of the Laws of 1923. Pursuant to its provisions the Public Service Commission determined that the spur was no longer necessary or convenient for the public service and that it constituted an

impediment and obstruction to the public use of the street. After this finding the city commenced these proceedings to condemn and remove the property. Title vested December 7, 1923, and the structure was removed in the spring of 1924. The condemnation proceedings have been pending ever since.

The Manhattan Railway Company owns the Elevated roads which it leased in 1903 to the Interborough Rapid Transit Company for 999 years. The Central Union Trust Company and the Equitable Trust Company are trustees under the Manhattan consolidated and second mortgages. William Roberts was appointed receiver of the Manhattan Railway Company September 6, 1932.

The questions involved on this appeal are novel and important. The railroads claim $6,500,000. They have been allowed about one-tenth of that amount. Their claims are large considering that it was their desire to escape the maintenance and operation of the Forty-second street spur.

There are three groups of parties: (a) The railroad interests; (b) the city, and (c) the abutting owners. The decision below satisfies none of them. All appear here as appellants.

The legislation leading up to the judgment herein is fully stated in the opinion of Mr. Justice O'Malley on the first hearing (126 Misc. Rep. 879); reversed (229 App. Div. 617) and new hearing ordered. The ultimate question is, How much must the city of New York pay to get the ele- [fol. 411] vated structures out of Forty-second street? The railroads have a State and city street franchise and an elevated structure and the right to interfere with the light, air and access of abutting owners. What is the difference in the total value of such rights in perpetuity and as thus terminated?

The franchise, both from the State and the city, had its origin in the Rapid Transit Act (Laws of 1875, ch. 606). It dates from September 7, 1875, and vests the railway "with an interest in the street in perpetuity" for the purpose of an elevated railroad. Long after the acquisition of the street franchise it was held that private easements of light, air and access, where the city did not own the abutting property, were not the property of the city but of the abutting owners. (Story v. New York Elevated R. R. Co., 90 N. Y. 122.) The railroad thereafter acquired title to these easements at large expense. The railroad

companies now claim that these easements are real estate, separate and distinct from the railroads and that they are entitled to compensation therefor at the market value thereof at the time of the present taking, for the reason that the removal of the elevated structure restores these easements to the abutting owners, greatly enhances the value of such property and thus deprives the railroads of the value of their property therein.

The contention of the city is that these easements are of no value without the railroad. In brief its position is: "The railway company owned at the time title vested in the city in this proceeding (a) a franchise, (b) an elevated railroad structure, (c) *and the right to maintain the structure for railroad purposes without liability to the abutting owners,* the three constituting one entire property,—a railroad in a public street.

It was held in substance in Kernochan v. New York Elevated R. R. Co. (128 N. Y. 559) that the easements were appurtenant to the premises themselves and could not be owned separately and distinctly. Quite apart from the discussion of the cases, it is clear that the railroad merely exhausted the right of the abutting owners to complain because the railroad was in the street and so trespassing on their property. The railroad as such possesses a right to impair the easements by the operation of its road. If it did not have such rights it would be guilty of an injury to the inheritance.

O'Malley, J., held that these property rights, whatever they might be called, vested in the railroad, so that it is entitled to be compensated therefor, whether considered as an ownership separate and distinct from the franchise or as considered as a value measured only by the limited railroad use granted by the franchises. He held that the rights as such had no market value but that the value must be [fol. 412] found by considering original cost, replacement value and earning capacity. The claimants demand an award for these rights of $3,600,000, the amount that it would cost them to acquire such rights on the date when title vested in the city under the legislation under consideration. O'Malley, J., on his theory fixed the value of such rights at $750,000. The Appellate Division held that the rights to impair light, air and access appurtenant to the property abutting on Forty-second street at the

time of vesting of title herein should be valued upon the basis of the value judicially determined at the time of the original acquisition of those rights. The Special Term on the new hearing thereupon placed a value on such rights of $539,117.40. This has been affirmed by the Appellate Division and is now before us for review. The judgment of O'Malley, J., is not before us for review, as it is not an intermediate order subject to review on this appeal.

The railroads claim here as below that the court erred in failing to award the full market value of the private easements acquired by the railroad company. Such value should be applied only if the railroad is operated as a going concern and it cannot be so operated unless it owns such rights as it acquired in 1877 or thereabouts.

In other words, the property in such easements, strictly speaking, is of no value to the railroads when the railroad ceases to operate and is taken out of the street, but the city should reimburse the railroads for what it cost them to acquire such easements when it terminates the right of use in perpetuity. The decision of the court below awards the railroads fair compensation. The contention of the city, that the railroads are entitled to no compensation, is based on the argument that these rights were of no use to the railroads except as they were compelled to acquire them to operate and of no value except to a going concern, has some logical force, but such rights were obtained in order to permit the roads to exercise their franchise in the street in perpetuity, and when the city terminated such rights it should fairly compensate the roads for the loss of such rights.

The language of the many opinions in the elevated railroad cases is not helpful in dealing with this problem. The decisions are conflicting and deal with a different problem. What is the right which the roads acquired to exercise their street franchise in perpetuity as against the abutting owners worth when the right to operate the elevated road is taken from them? It is as extreme to say "nothing" as to say that their property in the easements is property entirely distinct from the right to maintain the elevated structure, the same as if the abutting owners still owned them. That these easements would be worth $3,600,000 to the abutting owners if they now owned them [fol. 413] is beside the point. What is the city taking from

the railroads? That is the question. The railroads could not release their rights to the abutting owners and continue to operate their railroads in the street. It, therefore, acquired no real title to these easements apart from the operation of its road. They otherwise still attach to the property of the abutting owners.

We next come to the value of the street franchise itself. O'Malley, J., found that it had a value based on productiveness and that present earning power and reasonable prospective value should be considered. The Appellate Division held: "The franchise to build, maintain and operate the spur is of no value, since the spur can no longer be operated except at an annual loss and the taking by the city is a distinct benefit to the claimants since the Public Service Commission has determined that the spur is no longer necessary and convenient for public service."

It is difficult to see what the railroad has lost by the taking of its street franchise. It has gained relief from the burden of operating the road. What would any one pay for the franchise apart from the right to occupy the street? Should it receive more for its franchise when the spur can be operated only at a large annual loss? Of course it might possibly sometime gain some additional revenue if allowed to operate in perpetuity this spur in connection with the operation of its entire line. The railroad cannot claim a lack of profit, in rate fixing cases, on each part of its road. The whole system was operated at a profit but the finding that the Forty-second street franchise had no value should not be disturbed. While potentially traffic might be driven to the elevated by the congestion of the subways and the spur might have value as a traffic originating line such value is too speculative to to be considered.

Next comes the question of the award for the structures in the street. O'Malley, J., held that the railroads were entitled to substantial award based on reproduction cost. The Appellate Division held that junk value was all that should be allowed; nuisance value or what the illegal structure was worth when taken down. The right to have the structure in the street was worthless if the street franchise was terminated. The structures had only a nuisance value when the right to have them in the street ended.

On the whole, a fair valuation of the property taken is the amount awarded by the Appellate Division.

The order should be affirmed, without costs.

LEHMAN, J. (dissenting):

The Forty-second street spur of the elevated railroad was erected and maintained under a franchise and permission granted by the city and State of New York. It has [fol. 414] been removed under compulsion of the law. It is said that a duty to continue the maintenance and operation of the railroad would have been a burden rather than a privilege. The railroad company did not ask to be relieved of that duty. The structure in the street was the property of the railway company, constructed and paid for by that company. The right to erect and maintain that structure was granted by the sovereign. Even after that grant, the railway company was compelled to pay large sums to abutting owners for the right to obstruct permanently the easement of light, air and access which the abutting owners had in the city street. The sovereign State has compelled the removal of the railway structure from the street, and thus the easement of the abutting owners was relieved of the obstruction for which compensation had been paid by the railway company. The State has the power to revoke the franchise it had previously granted, but that power is subject to the constitutional limitation that it must pay fair compensation for property taken or destroyed in the exercise of its sovereign power.

The elevated railroad structure and the right to maintain and operate it constitute the property of the railway company which has been taken or destroyed by the State. The structure could not have been erected and operated lawfully in the public street without a public franchise; but in addition it was necessary to acquire from abutting owners of land, property rights which would be infringed by such a structure. The structure itself, the right to maintain and operate it, with the consequent obstruction, or partial destruction, of the easements in the street of the abutting owners were inseparable parts of that property. None would have value except in connection with the others. The value of the whole cannot be determined by placing separate value upon the parts—for the dismembered parts have no separate value.

Nevertheless, the Appellate Division upon the first appeal has attempted to fix the value of the property of the railway company by fixing separately the value of the inseparable parts of the railway company's property. It has determined that the public franchise is valueless because the spur cannot be profitably operated. For the same reason it has determined that the structure is valueless for use as a railway, and is worth only the amount which could be salvaged after it has been taken down. Finally, it has determined that the property rights which the railway company has acquired in the abutting land should be valued upon the basis of the value judicially determined in connection with proceedings brought at the time of the original acquisition of such rights. Upon the second trial the court was constrained to follow the rule [fol. 415] laid down by the Appellate Division. The award is based upon a valuation fixed accordingly.

The determination of the value of property presents a practical problem. It cannot be solved by definition, classification or formulas. Where property exactly similar can be readily bought and sold in an open market, the market price fixes the value of the property. The value fixed by the consensus of opinion of ready buyers and willing sellers in the open market may be evanescent, for that consensus of opinion may be based upon premises and anticipations which are proven false by the passage of time. None the less, where there is a real market in which there is a constant stream of ready buyers and willing sellers, the market price does, for the time at least, fix accurately the value of property; because property can never be worth more than the price at which exactly similar property can be readily acquired, nor less than the price at which it can be readily sold.

Of course, the value of an elevated railway structure in a public street cannot be fixed in such manner. There is no other property exactly similar to it. As a railway spur it could be operated only in connection with the main railway line of the railway company. No other corporation or person would be willing to buy it for use as a railroad, and after the structure has been removed from the street by command of the sovereign the railway company can never through purchase or construction replace that spur.

Where market price furnishes no standard by which value can be measured, we must seek other practical

criteria. In taking the elevated railroad structure out of the street of the city, the state deprives the railway company of its right to use that structure as a railroad spur in connection with the main railroad line, and at the same time deprives the railway company of its alternative right, if any, to sell the railroad structure to a third person or persons. The value of the use to the railway company of its property for railroad purposes and the value of the property for sale to others constitute the practical criteria by which the value of the property can be measured. I can conceive of no other practical criteria.

The Appellate Division has, as I have pointed out, determined that the structure has no value for use as a railroad and that the structure otherwise had no value except for junk. I will assume that the evidence sustains a finding that the structure had little or no value for use as a railroad, and the value of the structure as junk was unsubstantial. Certainly the award of over six hundred thousand dollars is erroneous and must be reversed upon the city's appeal if the value of the use of the structure for railroad purposes and the value of the structure as junk together constitute the value of the property taken by the authority of the State. The Appellate Division, of course, [fol. 416] did not so hold. It gave an independent value to the railway company's property rights in the abutting land, and authorized a substantial award for them.

Classification of these rights cannot guide us in fixing their value. That depends upon the use to which they could be put in connection with the railroad structure, or the price which a willing buyer would pay for their abandonment. If that structure is destroyed forever, then user of these rights is destroyed forever. Their user for railroad purposes may be unprofitable. Then the question must arise whether the State may compel their abandonment without compensation.

The railway company acquired these rights over fifty years ago from the owners of abutting property by compulsion under the authority of the State. In some cases the value was fixed by the courts; in other cases it was fixed by agrement of parties, but, doubtless, even in such cases the amount agreed upon constituted a rough estimate of the value which the courts would fix if the question were left to them. The measure of value adopted was the diminution of the value of the property suffered through

the erection and maintenance of the railroad structure. Conditions have changed since that time. Values of real property in New York increased vastly in the interval. Forty-second street has become a great business thoroughfare. The real property abutting thereon has been improved by the erection of buildings which in size and cost exceed any anticipation that could have been formed fifty years ago. If the railway company now desired to acquire these rights at a value determined by the diminution of value of the abutting property caused by the erection and maintenance of the railroad structure, it would be compelled to pay vastly more. If the railway company is compelled to abandon the structure, it will restore to the abutting property a value vastly greater than the original cost of the rights.

Perhaps in fixing a reasonable return upon the investment of a public utility company, original cost may be a relevant factor in determining the value of the investment. It seems to me irrelevant in fixing the value of property which is taken *in invitum*. Then the relevant factors are what would it cost to replace the property and the value of its possible use, assuming that a reasonably prudent person would be willing to pay that cost for such user, or if not, either the value of the user of these rights or the amount which a willing buyer would pay for the abandonment of these rights.

It is clear, I think, that if the railway company were not compelled to abandon the structure, the abutting owners would be willing to pay the railway company a very substantial amount for its abandonment with its consequent [fol. 417] accretion of great additional value to their land and buildings. That amount would constitute the realizable value of the railroad property to its owner, even if its user for railroad purposes were unprofitable and a burden upon the owner.

It is suggested that what I have called "realizable value" is, in fact, only "nuisance value;" that is, the amount which an owner can exact as the price for refraining from injury, rather than the price of a right of property which the owner can exercise for a legitimate purpose. The suggestion may not be lightly cast aside. One of the objects of the exercise of the power of condemnation of private property for a public use is to prevent an owner of property from exacting

more than the value which a ready seller could obtain from a willing buyer. The power to injure the value of neighboring property may come through ownership of property, but is not itself a property right nor an element in the value of property which the courts must recognize when they fix the compensation to be paid when the property is taken under the command of the sovereign.

The payment of all the damages which flow from a wrong constitutes full satisfaction for the injury done. As between the parties, such payment obliterates the injury; and the injured party cannot, usually, complain of the wrong for which he has been paid full compensation. It does not, however, result in any accretion of value to the property of the wrongdoer or a transfer of a property right to him out of the real property of the injured party. In many respects the payment by the railway company to the abutting owners is analogous to the payment of damages for wrongful injury, but not in all respects. If the city had possessed an unrestricted fee in the streets, the erection of the railroad spur under the franchise granted by city and State would have caused consequential damages to the abutting property, but no award was, or could have been, made to the owners for such consequential damages. They were entitled to an award because the railroad structure burdened or partially destroyed an easement on the public streets, which, this court has held, was appurtenant to property abutting in the street. The erection of the railroad structure could, therefore, not be authorized by the State and city without grant from the owners of the easement, and the awards to the abutting owners was the compensation paid to them for such grants.

It may be urged that since the determination of the value of property presents, as I have said, a practical problem, the juridical concepts underlying an award of damages which, otherwise, carry no practical consequences, must be disregarded. The difficulty here is that these juridical con- [fol. 418] cepts do carry practical consequences. They resulted in an increase of the legitimate cost of a public improvement, and the money to meet that cost was furnished by investors who purchased the stocks and bonds of the railway company, believing that the railway property was worth at least the expense necessarily and prudently incurred in acquiring the property. Certainly in determining

recognizes, and must be reversed upon the appeal of the railway company if those rights have a value which could be realized as the price of sale or abandonment.

Crane, O'Brien and Crouch, JJ., concur with Pound, Ch. J.; Lehman, J., dissents in opinion in which Hubbs, J., concurs.

Order affirmed.

[fol. 420] Form 9

COURT OF APPEALS

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals held at Court of Appeals Hall, in the City of Albany, on the 3rd day of July, in the year of our Lord one thousand nine hundred and thirty-four, before the Judges of said Court.

Witness, the Hon. Cuthbert W. Pound, Chief Judge, presiding. Wm. J. Armstrong, Clerk.

REMITTITUR—July 3, 1934

(P. 2)

In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad structures, &c., of the Manhattan Railway Company, &c., in East 42nd St., &c., in the Borough of Manhattan, City of New York, &c.

Be it remembered that on the 11th day of July in the year of our Lord one thousand nine hundred and thirty-three, Interborough Rapid Transit Company and others, the appellant-respondents in this cause, came here into the Court of Appeals by Hornblower, Miller, Miller & Boston, and others, their attorneys, and filed in the said Court Notices of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And the City of New York, one of the appellant- * * * respondents in said cause, afterwards appeared in said Court of Appeals by Arthur J. W. Hilly, its attorney, and also filed a notice of appeal. Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 421] (P. 3)

Whereupon, the said Court of Appeals having heard this cause argued by Charles E. Hughes, Jr., of counsel for William Roberts, as receiver, &c.; by Martin A. Schenck, for Central Hanover Bank & Trust Co., as Trustee, &c.; by J. Osgood Nichols for Interborough Rapid Transit Co.; by Paxton Blair, for City of New York; by William H. Page, for Bowman Biltmore Hotels Corp. and others; by Ellwood Thomas for Cooper Union for the Advancement of Science and Art; and by Charles Franklin, for Manhattan Railway Co.; and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be, and the same hereby is affirmed without costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said Supreme Court * * * there to be proceeded upon according to law.

(P. 4)

Therefore, it is considered that the said order be affirmed without costs, as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

Wm. J. Armstrong, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS,
*Clerk's Office:*

Albany, July 3, 1934.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Wm. J. Armstrong, Clerk. [Seal, Court of Appeals, State of N. Y.]

the reasonable rate that could be charged, the value of the property rights which a railway company must acquire, before it could erect and maintain its railway, could not be disregarded. Finally, and most significant, is the fact that the rights which the railway company was compelled to acquire from the abutting owners constituted property which is subject to assessment for taxation (People ex rel. Manhattan Ry. Co. v. Barker, 165 N. Y. 305), and, it must be noted, this court arrived at that conclusion because of the distinction it drew between payment of consequential damages and payments made by the railway company for a grant from the owners of an easement in the street.

True, the right of property thus acquired is in the nature of an easement or an interest in an easement, which has become inseparably attached to the railroad structure, just as an easement is appurtenant to a particular piece of real property; and it could not be used or granted except in connection with the railroad structure. None the less the property right of the railway company, however we may describe it, rests, like an easement, upon grant from the owner of the real property upon which it is a burden, and, like an easement, may be terminated by grant to the owner of the burdened property or by other instrument or act of like effect.

It seems to me quite plain that the city cannot be compelled to pay to the railway company any value for these rights beyond the value which the railway company could enjoy through user or sale. The amount paid for such rights, whether fixed by agreement or by judicial decree, furnishes no true measure of such value. It seems to me scarcely less plain that the city may not be permitted to pay for a taking of property which terminates the user of these rights, less than the value which might have been enjoyed through user or as the price of a grant to a grantee ready and willing to pay such price. After the owner has been compelled to pay for the acquisition of these rights because the courts have held that they were property rights, and after such rights have been made subject to taxation by the State because they constitute property rights, it seems to me too late for the State to urge that it may destroy these rights without paying for them the value which the owner could otherwise have obtained as the price of their sale or abandonment. So, too, it seems to me in-

[fol. 419] equitable to permit the owners of the abutting property to urge that these rights have only a nuisance value for which no compensation should be given when their predecessors in title have received compensation for a grant of these rights.

To fix the value which might be derived from a sale of these rights would doubtless present a difficult problem. Perhaps by the same methods which the courts employed in determining the diminution in the value of abutting property caused by the burdening of the appurtenant easement in the street, the courts could now determine the increment to the value of the abutting property caused by the removal of that burden. It does not follow that the owner of the abutting property would be willing or compelled to pay that price to secure the increment in value. Just as we may say with reasonable certainty that the railway company would not accept that price if the railroad were operated at a profit, so with like certainty we may say that the railway company would accept a much smaller price for the retransfer or abandonment of its rights to maintain the railroad structure if the operation were a burden. The courts must assume that both parties to a transaction will act reasonably. If the abutting owners and the railway company fixed the price by agreement, both sides would be called upon to use their business judgment. Business judgment is not fettered by rigid formulas, nor can a definite measure be applied to all the considerations which may enter. The court must determine, as a question of fact, in fixing values which depend upon business judgment, the price which would be fixed by negotiation between reasonable business men seeking profit. The amount fixed by the courts below as the present value of the property rights bears no relation to any value which might be obtained from user of the property, or as the price of its abandonment or transfer. It is purely arbitrary. It may be greater or less than the value. Property is taken without due process of law when the compensation paid is fixed arbitrarily rather than by a determination of the value which might be obtained from user and sale.

Thus the order of the Appellate Division must be reversed upon the appeal of the city, if the railway's property rights in the street have no value which the law

[fol. 422] At a Special Term of the Supreme Court of the State of New York held in and for the County of New York, at Part II thereof, at the County County House in the Borough of Manhattan, in said County on the 12th day of September, 1934.

Present: Hon. Alfred Frankenthaler, Justice.

New York County Clerk's No. 28,346. Year, 1923

In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company, or by whosoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

The Interborough Rapid Transit Company, Manhattan Railway Company, William Roberts, Receiver of Manhattan Railway Company, Chase National Bank of City of New York, Central Hanover Bank and Trust Company, The City of New York, Bowman Biltmore Hotels Corporation et al., Pershing Square Building Corporation, Rober W. Goelet et al., Cooper Union for Advancement of Science and Art, and Manhattan Storage & Warehouse Company having appealed to the Court of Appeals of the State of New York from the final order of the Appellate Division of the Supreme Court, First Judicial Department, dated March 24, 1933, and filed and entered in the office of the Clerk of said Appellate Division on the 24th day of March, 1933, a certified copy of which order was filed in the office of the Clerk of New York County on the 29th day of March, 1933, which order affirmed the final decree of the [fol. 423] Supreme Court, New York County, entered and filed in the office of the Clerk of New York County on the 12th day of May, 1932, and the said appeal having been duly argued at the Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said order so appealed from as aforesaid

be affirmed without costs and having further ordered and adjudged that the proceedings therein be remitted to the Supreme Court, there to be proceeded upon according to law; now on reading and filing the remittitur from the Court of Appeals, it is

Ordered that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court.

Enter.

A. F., J. S. C.

Compared and certified (Date) Sept. 13, 1934. Fee paid, 50¢. County Clerk, N. Y. Co., by A. S. O.

No. 109044

State of New York,
County of New York, ss;

I, Albert Marinelli, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify that I have compared the preceding with the original Order on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed, Filed Sept. 12, 1934.

In witness whereof I have hereunto subscribed my name and affixed my official seal, this 13 day of Sept., 1934.

Albert Marinelli, Clerk. (Seal.)

[fol. 424] Sir:

Please take notice that the within is a copy of an order on remittitur this day duly filed and entered in the office of the Clerk of the County of New York.

Dated New York, Sept. 12, 1934.

Yours, etc., Hornblower, Miller, Miller & Boston,, Attorneys for Interborough Rap. Trans. Co. (R. 820), No. 165 Broadway, Borough of Manhattan, New York City.

To Middlebrook & Sincerbeaux, Esqs., Attorneys for Manhattan Storage & Warehouse Company, 57 William Street, New York City.

[Endorsed:] Index No. 28,346. Year, 1923. Supreme Court, New York County. In the Matter of the Application

of the City of New York, relative to acquiring title to the elevated railroad structure in East 42nd Street, known as the 42nd Street spur. Order on Remittitur. Hornblower, Miller, Miller & Boston, Attorneys for Interborough Rap. Trans. Co. (R. 820), No. 165 Broadway, Borough of Manhattan, New York City. Filed September 12, 1934.

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[fol. 425] SUPREME COURT, NEW YORK COUNTY

New York County Clerk's Index No. 28346. Year 1923

In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

A final decree in this proceeding having been entered and filed in this Court on the 12th day of May, 1932, and Interborough Rapid Transit Company, Manhattan Railway Company, Chase National Bank of the City of New York, Central Hanover Bank and Trust Company, The City of New York, Bowman-Biltmore Hotels Corporation, Pershing Square Building Corporation, Robert W. Goelet, et al., Manhattan Storage and Warehouse Co., Cooper Union for Advancement of Science and Art, having appealed from said final decree to the Appellate Division of this Court for the First Judicial District and said final decree having been affirmed in all things, without costs, by this Court at said Appellate Division and order of affirmance having been entered therein on the 24th day of March, 1933, in the office of the Clerk of said Court, a certified copy of which order was filed in the office of the Clerk of this Court on the 29th day of March, 1933; and the Interborough Rapid Transit Company, Manhattan Railway Company, William

Roberts as Receiver of the Manhattan Railway Company, Chase National Bank, Central Hanover Bank and Trust Company, The City of New York, Bowman-Biltmore Hotels [fol. 426] Corporation, et al., Pershing Square Building Corporation, Robert W. Goelet, et al., Manhattan Storage and Warehouse Co. and Cooper Union for Advancement of Science and Art, having appealed therefrom to the Court of Appeals and the said Court of Appeals having sent hither its remittitur, filed herein on the 12th day of September, 1934, by which it appears that the Court of Appeals has affirmed said order in all things, without costs, and has given judgment accordingly and has remitted the judgment of said Court of Appeals to this Court to be enforced according to law; and this Court having by an order duly entered herein on the 12th day of September, 1934, ordered that said judgment be made the judgment of this Court, it is

Adjudged, that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court, and it is further

Adjudged, that the said order of the Appellate Division be and the same is hereby in all things affirmed without costs.

Dated, September 13th, 1934.

Albert Marinelli, Clerk.

Compared and certified (Date) Sept. 13, 1934. Fee paid, 50c. County Clerk, N. Y. Co., by A. S. O.

No. 109045

State of New York,
County of New York, ss:

I, Albert Marinelli, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify, that I have compared the preceding with the original Judgment on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed, Filed Sept. 13, 1934.

In witness whereof I have hereunto subscribed my name and affixed my official seal, this 13 day of Sept, 1934.

Albert Marinelli, Clerk. (Seal.)

[fol. 427] Sir:

Please take notice that the within is a copy of a Judgment on Remittitur this day duly filed and entered in the office of the Clerk of the County of New York.

Dated New York, Sept. 13, 1934.

Yours, etc., Hornblower, Miller, Miller & Boston, Attorneys for Interborough Rapid Transit Company, Room 820, No. 165 Broadway, Borough of Manhattan, New York City.

To Paul Windels Esq., Attorney for Corporation Counsel, The City of New York.

[Endorsed:] Index No. 28346. Year, 1923. Supreme Court, New York County. In the Matter of the Application of the City of New York, relative to acquiring title to the elevated railroad structure in East 42nd Street known as the 42nd Street Spur. Judgment on Remittitur. Hornblower, Miller, Miller & Boston, Attorneys for Interborough Rapid Transit Company, Room 820, No. 165 Broadway, Borough of Manhattan, New York City. Filed Sept. 13, 1934.

[fol. 428] State of New York,
County of New York, ss:

I, Albert Marinelli, Clerk of the Supreme Court in and for the said County, and Clerk of the Supreme Court of said State, do hereby certify that the foregoing consists of a certified copy of the printed papers used on the appeal in the Court of Appeals of the State of New York in the case of "In the matter of the Application of the City of New York relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances," upon which the said Court of Appeals acted and which have been certified to

this court by the said Court of Appeals with its remittitur, and a true copy of the remittitur of the said Court of Appeals in said case and a true copy of the order of the Supreme Court entered on said remittitur and a true copy of the judgment entered upon said order and remittitur, making the Judgment of the Court of Appeals the Judgment of the Supreme Court of the State of New York.

In witness whereof I have hereunto set my hand and affixed my official seals this 2nd day of Oct., 1934.

Albert Marinelli, Clerk. (Seal.)

[fol. 430] [Stamp:] Supreme Court, U. S. Office of the Clerk. Received Sep. 28, 1934

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES

October Term, 1934

No. —

In the Matter of the Application of The City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

On consideration of the application of counsel for William Roberts, as Receiver of Manhattan Railway Company, Manhattan Railway Company, Interborough Rapid Transit Company, Central Hanover Bank and Trust Company, as Trustee, and The Chase National Bank of The City of New York, as Trustee, in the above entitled cause, and good cause therefor having been shown, it is now here ordered that the time within which a petition for a writ of certiorari may be filed herein be, and the same is hereby extended for a period of 60 days from the date hereof.

Dated Sept. 28, 1934.

Harlan F. Stone, Associate Justice of the Supreme Court of the United States.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 7, 1935

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.